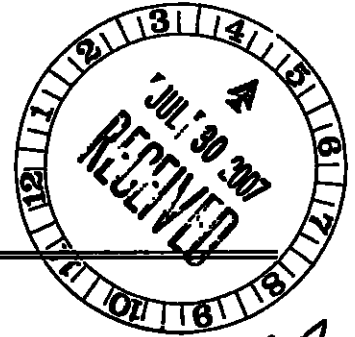


BEFORE THE
SURFACE TRANSPORTATION BOARD



KANSAS CITY POWER & LIGHT
COMPANY

Complainant,

v

UNION PACIFIC RAILROAD COMPANY

Defendant

Docket No 42095

ENTERED
Office of Proceedings

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**OPENING EVIDENCE OF COMPLAINANT
KANSAS CITY POWER & LIGHT COMPANY**

KANSAS CITY POWER & LIGHT
COMPANY

PUBLIC VERSION
CONFIDENTIAL MATERIAL
REDACTED

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)	
Defendant.)	
)	

Docket No 42095

PART I

COUNSEL'S ARGUMENT AND SUMMARY OF EVIDENCE

This is the Opening Evidence of Complainant, Kansas City Power & Light Company ("KCPL") In this proceeding, KCPL challenges (1) the reasonableness of the common carrier rates established by Defendant, Union Pacific Railroad Company ("UP") for application to the transportation of coal in unit train service in KCPL-provided rail cars from various mine origins in the Powder River Basin region of Wyoming ("PRB") to KCPL's Montrose Generating Station near Ladue, Missouri, which rates include a "fuel surcharge", and (2) the reasonableness of UP's unilateral revision of General Rule Item 4140 of Circular 111 to limit the volume of coal that KCPL can tender under the challenged rates to 2,100,000 tons annually

The challenged rates and surcharge were established by UP in Item 4140-Series of its Unit Train Coal Common Carrier Circular 111, and Items 690 and 691 of UP's Circular 6603-Series. The challenged service term is established in General Rule Item 4140 of UP's Circular 111. *See* Exhibit I-1. As of January 1, 2006, the rate (including the surcharge) assessed by UP under the Circular was \$16.90 per ton. The rate (including the surcharge) stood at \$16.82 per ton as of June, 2007. The challenged rates and service limitation are unreasonable and therefore unlawful, in violation of 49 U.S.C. §§ 10701(d)(1) and 10702.

Coal is transported from the PRB to Montrose over a through route via Kansas City, Missouri. At Kansas City, shipments originated by UP in the PRB are interchanged to UP's interline partner, the Missouri and Northern Arkansas Railroad ("MNA"), for ultimate delivery to Montrose. Pursuant to various agreements in effect between UP and MNA, unilateral control over the establishment of rates and service terms for coal transportation from the PRB to Montrose is vested in UP,¹ which pays MNA an agreed-upon division of revenue for the latter's service contribution. Montrose is completely captive to the UP/MNA combination, and UP has conceded that it possesses qualitative market dominance over the Montrose traffic within the meaning of 49 U.S.C. § 10707. *See* Order served May 4, 2007 at 2.

¹ Because UP has exclusive control over pricing for coal service to Montrose, UP properly is the only defendant in this proceeding. UP has not claimed otherwise.

The evidence presented herein by KCPI warrants the following relief:

(1) a Board determination that for all relevant time periods, the challenged rates (including the fuel surcharge) exceed a reasonable level, and therefore violate 49 U.S.C. § 10701(d)(1), (2) a Board determination that UP's establishment and maintenance of the 2,100,000 ton annual volume cap constitutes an unreasonable practice, and therefore violates 49 U.S.C. § 10702, (3) the prescription by the Board of lawful maximum rates for coal transportation to Montrose from the origins covered by Circular 111, Item 4140-Series, pursuant to 49 U.S.C. §§ 10704(a)(1) and 11701(a), (4) the prescription of an annual shipment maximum under that Circular Item of at least 2,400,000 tons, or a complete removal of any such limitation, pursuant to 49 U.S.C. § 10704(a)(1), and (5) an award by the Board of reparations payable by UP to KCPL for all charges collected by UP pursuant to the Circular since January 1, 2006 in excess of the rates prescribed by the Board, together with interest until fully paid.

By stipulation of the parties and with the concurrence of the Board, the maximum reasonable rates for coal shipments from the PRB to Montrose are equal to 180% of the variable cost of that service.² KCPL's evidence shows that as of the Second Quarter of 2007, the maximum reasonable rates for unit train service from the PRB to Montrose were as follows.

² See Order served May 4, 2007.

<u>Origin</u>	<u>Maximum Rates per Ton³</u>	
	<u>Aluminum Trainsets</u>	<u>Steel Trainsets</u>
Belle Ayr	\$14.96	\$17.17
Black Thunder	\$14.44	\$16.76
Black Thunder South	\$14.50	\$16.61
Caballo	\$15.00	\$17.21
Jacobs Ranch	\$14.66	\$16.87
Antelope ⁴	\$14.11	\$16.31
Caballo Rojo	\$14.83	\$17.15
Coal Creek	\$14.74	\$17.05
Cordero	\$14.76	\$17.06
North Antelope	\$14.20	\$16.42
Rochelle	\$14.22	\$16.43

³ Item 4140-Series of Circular 111 establishes two sets of rates applicable to Montrose shipments. The first set applies to shipments with minimum carload lading weights of 117 tons, and a minimum per shipment tender of 12,285 tons, which effectively describes shipments in trainsets of aluminum railcars. The other set of rates, higher than the first, applies to shipments with minimum carload lading weights of 100 tons, and a minimum per shipment tender of 11,000 tons, which effectively describes shipments in trainsets of steel railcars.

⁴ The maximum rates for shipments from Belle Ayr, Black Thunder, Black Thunder South, Caballo and Jacobs Ranch for aluminum cars, and Belle Ayr, Black Thunder and Caballo for steel cars, are based upon the characteristics of actual shipments made from those origins since January 1, 2006. Maximum rates for other UP-served origins in the Powder River Basin to which the challenged rates also apply are based for present purposes on weighted average shipment characteristics (*see* Part II-A). As shipments are made from such other origins in the future, the maximum rates can be adjusted to reflect the actual shipment characteristics.

The evidence also demonstrates that for shipments under the challenged rates from January 1, 2006 through June 30, 2007, reparations (not including interest) due KCPL from UP total \$8,064,148.47

A. BACKGROUND FACTS

1. The Montrose Station

Montrose is a 510 megawatt coal-fired generating station which is 100% owned by KCPL. Montrose is one of four coal-fired facilities owned (wholly or partly) and operated by KCPL. The others are the 657 megawatt Iatan Station near Sadler, Missouri (70% owned by KCPL); the 1,418 megawatt LaCygne Station near Amsterdam, Missouri (50% owned by KCPL); and the 563 megawatt Hawthorn Station in Kansas City, Missouri (100% owned by KCPL).

The units at Montrose came into full operation in 1964. For many years, Montrose functioned as a spinning reserve facility – a generating station which was maintained and readily available as needed – and was responsible for up to 50% of KCPL's interchange power sales. Starting in the late 1990s, however, significant growth in electricity demand within KCPL's service territory led to increased reliance on Montrose generation. For the last several years and continuing through the present, Montrose has been operated as a "baseload" station; that is, subject to occasional outages for maintenance or repair, the station must run at or near its full capacity on a continuous

basis All expectations are that Montrose will continue to run as a baseload facility for the foreseeable future

As the Board is aware, baseload power plants are the backbone of providing electric service to customers KCPL's ability to provide reliable service to its customers is directly linked to the predictable operation of its baseload facilities As the importance of Montrose-generated electricity has grown in the KCPL's overall generation portfolio, the need for more coal and the reliable delivery of that coal has increased significantly

2. Coal Transportation to Montrose, 1964-1995

When Montrose was designed and constructed, state or federal air pollution or emissions control regulations were not a meaningful concern, and until 1985 Montrose burned a variety of coals from Missouri, Oklahoma, and Illinois. While modest amounts of coal (usually measured in the tens of thousands of tons annually) found their way to Montrose by truck, the preponderance was delivered by the former Missouri-Kansas-Texas Railroad ("MKT") in common carrier service in conjunction with the Missouri Pacific Railroad ("MP") and/or the predecessor to what is now BNSF Railway Company. The MKT tracks were the only rail lines that served the Montrose Station,⁵ a situation which persisted when and after UP acquired MKT in 1988, and remains the case today. Also in 1988, the Missouri Department of Natural Resources lowered Montrose's stack

⁵ In 1981, the reasonableness of the common carrier rates assessed by MKT and its origin connections became the subject of litigation before the Board's predecessor See ICC Docket No 38227S, *Kansas City Power & Light Company v Burlington Northern Railroad, et al*

emission limit for sulfur dioxide, and effectively eliminated the station's ability to burn high sulfur bituminous coal from Missouri, Oklahoma or Illinois

Beginning in 1985, in response to rising costs for local coal and emerging regulatory limitations on power plant air emissions, KCPL began to transition the Montrose fuel supply to low sulfur PRB coals. Starting in 1986, PRB coal was transported to Montrose pursuant to a series of contracts entered under 49 U.S.C. § 10709 (formerly 49 U.S.C. § 10713). One contract covering most of KCPL's Montrose traffic was entered in 1986 with BNSF and MKT, which became a BNSF-UP contract after MKT's acquisition in 1988. Another contract, for single line service via UP alone, was entered in 1993. Both of these contracts expired in 1995.

3. Coal Transportation to Montrose, 1995 - 2005

In 1992, the Board's predecessor approved UP's transfer of approximately 500 miles of rail lines in Kansas, Missouri and Arkansas to MNA, which at the time was a new regional railroad.⁶ Included were the lines used by the former MKT to serve Montrose, both from a then-existing connection with BNSF at Fort Scott, Kansas, and from Pleasant Hill, Missouri, where MNA would connect with the main UP system. However, the terms of the agreements between MNA and UP gave UP exclusive control

⁶ See, e.g., Finance Docket No. 32187, *Missouri & Northern Arkansas Railroad Company, Inc. – Lease, Acquisition and Operation Exemption – Missouri Pacific Railroad Company, et al.*, Decision served December 22, 1992.

over the establishment of rates and service terms for PRB coal shipments to Montrose ⁷
Through the employment of an economic "paper barrier," those agreements also
effectively precluded MNA from delivering coal to Montrose from the BNSF interchange
at Fort Scott on reasonable terms.

In anticipation of the expiration of the BNSF-UP and UP contracts
referenced above, KCPL approached UP in 1994 in an effort to negotiate new contract
rates and service terms to take effect on January 1, 1996. These efforts were
unsuccessful, and in May, 1994 UP notified KCPL that it was suspending negotiations.
KCPL next approached MNA, and sought to determine whether and at what rates MNA
would be willing to deliver coal to Montrose from the BNSF interchange at Fort Scott.
When MNA quoted a common carrier rate in excess of \$50.00 per ton for the roughly 60-
mile haul, KCPL asked UP to waive the terms of its agreements which prevented MNA
from offering a reasonable rate. UP refused,⁸ and litigation ensued before the Board's
predecessor over the reasonableness of the MNA common carrier rate and the restrictive
terms of the UP-MNA agreements.⁹

Following KCPL's submission of its opening evidence in *Docket No. 41528*
in June, 1995, negotiations re-commenced between KCPL and UP. These negotiations

⁷ Exhibit II-A-5, (Exhibit F)

⁸ See electronic workpaper "KCPL and UP Letters.pdf."

⁹ ICC Docket No. 41528, *Kansas City Power & Light Company v. Missouri
Pacific Railroad Company, et al*

culminated in a new contract covering all PRB coal shipments to Montrose, denominated as Contract No. UP-C-30239. That contract expired on December 31, 2005

4. The Advent of This Proceeding

Early in 2004, in anticipation of the expiration the following year of Contract UP-C-30239, KCPL approached UP in an effort to negotiate reasonable rates and service terms for a new or extended contract. the business platform which had governed PRB coal transportation to Montrose since 1986. In the Spring of that same year, however, UP unilaterally established its Circular 111 common carrier pricing program for all PRB shipments that were not committed under contracts, or were governed by contracts that were set to expire within 36 months.¹⁰ Without a request by or prior discussion with KCPL, UP listed the Montrose movement among those that would be governed by the new Circular. As detailed in KCPL's Complaint, the rates and service terms that UP established for application to coal shipments to Montrose were set out in Item 4140-Series of Circular 111

Following the roll-out of Circular 111, KCPL continued to seek to engage UP in negotiations for a new or extended contract. However, consistent with its public pronouncements at the time and in a unilateral break with a nearly 20-year business pattern with respect to Montrose coal transportation, UP took the firm position that

¹⁰ See Complaint, Exhibit A

subsequent to December 31, 2005 it only would move PRB coal to Montrose in common carrier service under the rates and terms established in Item 4140 and Circular 111

The lowest rate that UP set for Circular 111 shipments to Montrose was substantially higher than either the rates under KCPL's expiring contract or the rate levels that KCPL considered reasonable and could agree to as part of a new contract arrangement. Moreover, UP made the rates subject to a "fuel surcharge," which automatically increased the Circular 111 rate by a percentage determined using a formula devised by UP. For example, as of January 1, 2006 the surcharge increased the published Circular 111 rate by 18.5%

Though the rates and terms established in Circular 111 to govern shipments to Montrose were not acceptable to KCPL, UP had made it clear that there were no other alternatives available to KCPL if it was to secure transportation of the coal fuel that is critical to the operation of the Montrose Station. Therefore, acting under duress, KCPL executed and transmitted to UP the documentation demanded by the carrier as a condition for shipping coal under the lowest applicable Circular 111 rates.¹¹ In so doing, however, KCPL advised UP in writing that KCPL did not consider the rates and service terms established by UP to be reasonable, was not voluntarily agreeing to accept those rates and terms, and specifically was reserving its rights to challenge them before the Board

¹¹ See Complaint, ¶ 17.

On October 12, 2005, KCPL filed its Complaint in this proceeding, and shipments to Montrose under the challenged rates and service terms began after January 1, 2006. By Decision served October 26, 2005, the Board entered a Protective Order to govern the handling of confidential data and documents that might be exchanged by the parties during discovery, and adopted a procedural schedule for the submission of evidence. However, on February 27, 2006, the Board suspended this schedule pending the conduct and conclusion of Ex Parte No. 657 (Sub-No. 1), *Major Issues In Rail Rate Cases* ("*Major Issues*")

Although the Board served its decision in *Major Issues* on October 30, 2006, the procedural schedule in this case was not immediately revived. While *Major Issues* was pending, the Board, acting *sua sponte*, raised the separate question whether UP's coal service to Montrose was outside the agency's jurisdiction, on the grounds that the Circular 111 arrangement constituted a contract under 49 U.S.C. § 10709. In briefs requested by the Board, both KCPL and UP demonstrated that they neither intended to, nor as a matter of law did, enter into a contract, and that the rates under challenge here are common carrier rates fully subject to the jurisdiction of the Board under 49 U.S.C. § 10709(d)(1). On March 29, 2007, the Board re-affirmed that it did have jurisdiction over the subject rates, and directed the parties to submit a new procedural schedule

In their briefs, both KCPL and UP argued that the Circular 111 arrangement for service to Montrose did not meet the traditional, legal criteria for the existence of a

binding contract. However, the Board did not address the traditional elements of a contract, it simply found that the parties could reasonably have concluded that the kind of arrangement documented in Circular 111 would not preclude the agency from reviewing the reasonableness of the Montrose rate.

On April 18, 2007, the parties jointly proposed a schedule, and advised the Board of two stipulations to which they had agreed and were submitting to the Board for acceptance. First, the parties stipulated that UP possessed qualitative market dominance with respect to coal service to Montrose. Second, the parties agreed that the maximum rates that would be determined through application of the "stand alone cost" constraint of the *Coal Rate Guidelines* would not exceed the statutory quantitative market dominance threshold of 180% of the variable cost of service. Therefore, the parties agreed to waive the presentation of stand-alone cost evidence.

On May 4, 2007, the Board issued an Order accepting the stipulations, and directing the parties to submit two rounds of simultaneous evidence on variable costs. KCPL's Opening Evidence is hereby submitted in accordance with that Order.

B. THE CHALLENGED RATES EXCEED 180% OF VARIABLE COSTS

The law mandates that "[i]f the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable." 49 U.S.C. § 10701(d)(1). Section 10707, in turn, defines market dominance

as “an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.” 49 U.S.C. § 10707(a). This “qualitative” criterion also is subject to a “quantitative” threshold: the Board cannot find market dominance if the challenged rate does not exceed 180% of the variable cost of providing the subject service. 49 U.S.C. § 10707(d)(1)(A).

UP already has conceded that it has qualitative market dominance over the issue traffic, and that the rates at issue would exceed stand-alone costs as determined under the *Coal Rate Guidelines*. Thus, the maximum rates in this proceeding are governed by the jurisdictional threshold, and KCPL’s evidence is limited to this quantitative market dominance test. As shown below, for all relevant time periods, the challenged rates (including the fuel surcharge) exceed 180% of the variable cost of providing the subject service to KCPL.

1. Variable Costs for Service to Montrose Should be Determined on a Movement-Specific Basis

In *Major Issues*, the Board ruled that henceforth, variable costs in coal rate proceedings – including this one – would be calculated solely on the basis of system average unit costs, using the Board’s Phase III Uniform Rail Costing System (URCS) program. KCPL respectfully submits that this ruling was in error¹² for the reasons set forth in the comments filed in *Major Issues* by the Western Coal Traffic League

¹² A petition for judicial review of the Board’s decision in *Major Issues* was filed in the U.S. Court of Appeals for the District of Columbia Circuit by WCTL. That appeal remains pending.

(“WCTL”), of which KCPL is a member, and allied coal shipper interests. These arguments will not be repeated here, but are incorporated herein by reference and are included in KCPL’s electronic workpapers.¹³

The Board has acknowledged that exclusive reliance on system average URCS calculations likely will bias the outcome in the railroads’ favor.¹⁴ That most assuredly is the case here, as the UP/MNA movement to Montrose is precisely the type of cycling unit train service that is characterized by the kind of efficiencies and economics that STB and ICC precedents repeatedly invoke as part of the justification for preferring movement-specific cost calculations to system averages.¹⁵ KCPL’s Opening Evidence conforms to the Board’s directive in *Major Issues* with respect to variable cost determinations. However, KCPL respectfully reserves all rights to seek to reopen the record in this proceeding and/or pursue reconsideration of any rulings made herein, should future court or agency actions overturn that portion of the *Major Issues* Decision.

¹³ See electronic workpaper folder “657 Comments.”

¹⁴ *Major Issues*, Decision served October 30, 2006 at 52.

¹⁵ See, e.g., *Texas Municipal Power Agency v. BNSF Railway Co.*, 6 S.T.B. 573, 583, 617 (2003); Docket No. 42072, *Carolina Power & Light Co. v. Norfolk Southern Railway Co.*, Decision served December 23, 2003 at 114; *Wisconsin Power & Light Co. v. Union Pacific Railroad Co.*, 5 S.T.B. 955, 989 (2001); *FMC Wyoming Corp v Union Pacific Railroad Co.*, 4 S.T.B. 699, 747 (2000) ; *San Antonio Texas v Burlington N. R. R.*, 1 I.C.C. 2d 561, 569 (1986); *Rules to Govern the Assembling and Presenting of Cost Evidence*, 337 I.C.C. 298, 304 (1978).

2. Operating Parameters for the Calculation of Montrose Variable Costs

KCPI.'s Opening Evidence on variable costs is sponsored by witness Thomas D. Crowley of L.E. Peabody & Associates, Inc., and is detailed in Part II-A. As shown therein, for all time periods through the Second Quarter of 2007, the rates at issue in this proceeding exceed the jurisdictional threshold.

The variable costs for the portion of the Montrose movement from the PRB origins to UP's interchange with MNA at Kansas City were developed utilizing UP's 2006 URCS unit costs and the set of specific inputs and offsets described below.

Variable costs for the portion of the subject movement from the UP-MNA interchange at Kansas City¹⁶ to the Montrose Station were developed using the 2006 Western Region average URCS unit costs.¹⁷ The same categories of inputs and offsets used for the UP portion of the Montrose move were used for the MNA portion of the joint-haul service.

3. Variable Cost Inputs

KCPL utilized the following inputs in making its variable cost calculations:

1. Railroad;
2. Commodity;
3. Cars per train;

¹⁶ MNA operates under trackage rights over UP's line between the interchange tracks in Kansas City and the start of its own lines at Pleasant Hill, Missouri.

¹⁷ Because MNA is not a Class I railroad, it is not required to file an Annual Report Form R-1, the basic data source for carrier-specific URCS unit costs. Therefore, Western Region average unit costs are used as a surrogate. *See Adoption of the Uniform Railroad Costing System as a General Purpose Costing for All Regulatory Costing Purposes*, 5 I.C.C.2d 894, 917-18 (1989).

4. Type of service;
5. Tons per car;
6. Tare weight;
7. Loaded miles;
8. Shipment type;
9. Car ownership; and
10. Type of car.

Each of the inputs represents a fundamental element of the movement that is easily determined through records kept by the parties, and rarely if ever is a matter of serious dispute. In the case of the numeric inputs, Items 3, 5, 6 and 7, these figures define the scope of the movement from a quantity perspective, and add clarification to the other inputs, such as car type. KCPL's variable cost calculations include these quantity-related items on an actual basis, as they are clearly known and should not be in dispute. These actual inputs are in contrast to the unit cost adjustments and special studies that are precluded by the Board's ruling in *Major Issues*. Certainly, *Major Issues* properly cannot be read as calling for the use of decidedly inaccurate surrogates for such inputs as tare weight, which are defined and known. See Part II-A.¹⁸

KCPL also notes that the designers of the URCS Phase III program appear to have envisaged that a user of the program might have more detailed inputs that could enhance the calculations because the program has simple pull-down menus that make such changes readily accessible. For example, the pull-down menus make it possible to quickly change, *inter alia*, the number of locomotives and the unit train weight.

¹⁸ In fact, the URCS Phase III Cost model will not operate without most of these inputs.

4. Terminal Switching

The URCS Phase III cost model automatically includes a system-average cost assignment for terminal switching. The ICC established a general definition of terminal switching in *Sioux City Terminal Railway Switching*, 241 I.C.C. 53, 90 (1940) (“*Terminal Switching*”), holding that:

Switching comprises all movements of railway cars and locomotives in yards or at way stations, except movements in road trains running between stations, movements of locomotives assisting road trains in and out of terminals, and movements of locomotives between train terminals and enginehouses.

UP and MNA’s handling of KCPI.’s Montrose traffic does not involve any terminal switching. It is a loop track movement at both origin and destination, and all components of the train stay together on a continuous basis from one cycle to the next.¹⁹ The loop track costs already are accounted for through the inclusion of loop track miles in the loaded miles input, which is required by the Board’s URCS procedures and consistent with its costing precedents. *See, e.g., Increased Rates on Coal, BN, Montana to Superior, Wisconsin*, 362 I.C.C. 625, 665 (1980); *Annual Volume Rates on Coal – Wyoming to Flint Creek, Arkansas*, 361 I.C.C. 533, 572 (1979). Not only would the assignment of terminal switching costs to the Montrose movement compel KCPI. to bear a cost (marked up by

¹⁹ To the extent that locomotives are periodically removed from the train and replaced with freshly serviced locomotives, such activity is considered to be hostling and not terminal switching because it does not involve the switching of cars. *See Terminal Switching* at 91 (definition of intratrain switching requires movement of cars not locomotives). *See also FMC Wyoming, supra* at 753 n.104.

80%) for a service that it does not consume, but if terminal switching and loop track costs both are included in the variable cost calculation, the result would be an improper double count of the costs associated with the looptrack portion of the line-haul operation.

Previous western coal unit train rate decisions routinely exclude terminal switching from the variable cost calculation because that service does not take place in the unit train movement, a reason wholly independent of the movement-specific special unit cost study question addressed by the Board in *Major Issues*. Docket No. 42057, *Public Service Co. of Colorado d/b/a Xcel Energy, Inc. v. BNSF Railway Co.*, Decision served June 8, 2004 at 124-125 (“*Xcel*”). The exclusion of such costs is indicative of the regulatory principle that prohibits the assignment of costs for services that are not performed.²⁰ Thus, KCPL has excluded the costs associated with this activity.

5. Private Car Payments

One of the Phase III system average unit costs automatically applied by the program is a system average allocation of private car allowance payments made by a railroad to a select group of shippers. However, as is clear from reviewing Item 4140 of Circular 111, UP does not pay KCPL for the use of KCPL railcars. Item 2 from the General Rate Application Rules for Item 4140 states that “Milcage allowance payment on

²⁰ Analogous examples include the standard exclusion of costs for car cleaning and grain doors, which have no relevance to the variable cost of unit train coal service. See, e.g., *Xcel*, *supra* at 133; *Carolina Power & Light Co.*, *supra* at 125; *Wisconsin Power & Light Co.*, *supra* at 998.

private equipment will not apply.” Because UP makes no payment, there is no private car cost properly assignable to the Montrose traffic.

6. Cost of Capital

KCPL’s variable cost calculations incorporate the Board’s most recent determination of the railroad industry cost of capital, which was for calendar year 2005. Ex Parte No. 558 (Sub-No.9), *Railroad Cost of Capital – 2005*, Decision served September 20, 2006. For the reasons detailed in WCTL’s Reply Comments and Petition for Reconsideration in that proceeding, however, the methodology used to determine the railroad industry’s 2005 cost of capital is fatally defective, and both the methodology and its 2005 product should be corrected.²¹

As WCTL pointed out in its December 18, 2006 Comments in the separate proceeding opened by the Board to consider modifications to the cost of capital methodology,²² as applied, the current formula perversely concludes that record railroad earnings and profits and the related run-up in railroad stock prices effectively *increase* the

²¹ The same manifest flaws are evident in the Association of American Railroads’ (“AAR”) proposed cost of capital calculations for 2006, which have yet to be considered by the Board. WCTL’s July 25, 2007 Comments in reply to the AAR’s 2006 submission, to which KCPL subscribes, are included in the electronic workpapers as “WCTL Cost of Capital Comments 7-25-07.pdf,” and are incorporated herein by reference

²² Ex Parte No. 664, *Methodology to be Employed in Determining the Railroad Industry Cost of Capital*. WCTL’s Comments, which also include WCTL’s Reply Comments and Petition for Reconsideration in *Ex Parte No. 558 (Sub-No.9)*, are included in KCPL’s electronic workpapers as “WCTL Ex Parte No 664 Comments.pdf,” and are incorporated by reference.

railroads' cost of capital, and thus justify ever higher rates on captive coal traffic.

Obviously, there is sound reason to doubt the accuracy and legitimacy of a regulatory approach which implicitly holds that as the regulated entity's financial health improves, the government should *accelerate* a wealth transfer from that entity's most dependent customers.

KCPL strongly supports reform of the Board's approach to determining the railroad industry cost of capital in the manner advocated by WCTL, and specifically submits that the results of that reform should be applied in this case for all relevant time periods. Thus, while KCPL's variable cost evidence reflects the Board's most recent cost of capital determination, KCPL reserves the right to modify its submission and/or seek reconsideration and correction of any subsequent cost calculations by the Board, to reflect the ultimate outcome of *Ex Parte No. 664*

7. The Proper Treatment of MNA

Under the terms of its various agreements with UP, MNA receives a revenue division in consideration of its participation in the through movement between the PRB and Montrose.²³ *Inter alia*, Section 22.01 of the Lease between UP and MNA provides that the "Lessor [UP] will pay Lessee revenue divisions per loaded car on traffic

²³ See Exhibit II-A-5 (Exhibit E). Per Exhibit F to the lease, MNA granted UP automatic, blanket concurrence in any through rates and service rules that UP might choose to establish for the Montrose traffic, so long as MNA's revenue division is preserved. As noted *supra*, UP is solely responsible for the level of the rates and the terms of service at issue in this proceeding.

originating or terminating on the Lease Premises” Exhibit E to the Lease (titled “Divisions”) specifically describes MNA’s remuneration as a division, and provides for various adjustment mechanisms to the divisions earned by MNA in specific circumstances.

MNA has sole responsibility for the provision of common carrier service over the lines that it controls and maintains between Pleasant Hill and Ladue (MNA actually operates over 490 miles of former Missouri Pacific track), and handles the KCPL trains in line-haul service over 114 miles each in the loaded and empty directions. Section 5.03 of the UP/MNA Lease specifically obligated MNA to obtain ICC approval to conduct its rail freight service as an independent rail carrier, which it did. *See Finance Docket No. 32187, Missouri & Northern Arkansas Railroad Company, Inc – Lease, Acquisition and Operation Exemption – Missouri Pacific Railroad Company and Burlington Northern Railroad Company, Decision served December 22, 1992.* Likewise, MNA has direct control over operations, maintenance and construction on the subject lines, and with select exceptions not relevant to this case, UP has no rights to operate over the MNA lines so long as MNA is in business. *See Exhibit II-A-5, Sections 3.01, 3.02 (affirming MNA’s common carrier status), 6.01, 8.01, and 8.04.* MNA also must pay all applicable taxes associated with the property, and it assumes all liabilities associated with its operation. *See id.*, Sections 10 and 13. Save its retention of title to the lines and

underlying real estate, UP's divestment to MNA of the rail lines used to serve Montrose and all rights, liabilities and obligations with respect thereto, was complete.

Given MNA's indisputable status as a line-haul common carrier and the nature of its participation in the through movement to Montrose, in accordance with established agency practice and precedent KCPL has calculated variable service costs for the entire movement from the PRB to Montrose, treating the divisions payments made by UP to MNA as offsetting revenue to UP's joint-haul partner. These total variable costs are compared to the total through rate (including the fuel surcharge) established for the movement, for purposes of determining the revenue-to-variable cost ratios produced by the challenged rates and the lawful maximum rates under the parties' Board-approved stipulation.

8. Summary

The results of the variable cost analysis described in the foregoing sections are set out in Exhibits II-A-1 and A-2. These calculations demonstrate that for all relevant time periods, the rates charged by UP for coal transportation service to Montrose have exceeded the lawful maximum levels.

KCPL's variable cost calculations were carried out in compliance with the Board's rulings in *Major Issues*, taking account of three obvious and indisputable operating parameters specific to the Montrose service (*i e* , the actual tare weights of railcars used in Montrose service, and the absence of any terminal switching service or

private railcar payments by UP). As discussed *supra*, KCPL submits that the Board's preclusion of movement-specific adjustments to system average unit cost leads to less accurate variable cost computations that are biased in UP's favor. However, the inaccuracy and bias would be even more pronounced if the Board was to ignore these three operational realities.

Exhibit II-A-6 reproduces the KCPL variable cost and jurisdictional threshold calculations *without* acknowledging the actual operating parameters of the movement. That is, they assume that the tare weights of the KCPL railcars used in Montrose service equal the average tare weights for all cars on the UP system (as opposed to their actual, known weights), and that KCPL should bear costs for terminal switching that does not take place and private car costs that UP does not incur.²⁴ The artificial and wholly unjustified further inflation of the Montrose variable costs (and associated maximum rate ceilings) that results from these arbitrary assumptions graphically illustrates the importance of reliance on actual data to the fullest extent possible within the limits of the *Major Issues* rules.

²⁴ As discussed in Part II-A-2-a, UP's 2006 Form R-1 contains input errors in the accounts that URCS deems relate to terminal switching. See Exhibit II-A-6.

**C. UP'S ANNUAL VOLUME LIMITATION
IS AN UNREASONABLE PRACTICE**

The Board has the authority and responsibility to evaluate and prescribe reasonable railroad practices. Under 49 U.S.C. § 10702, rail carriers are required to “establish reasonable . . . rules and practices on matters related to . . . transportation.” In turn, under 49 U.S.C. § 10704(a)(1), the STB has the power to prescribe the rules and practices that a carrier must follow if the agency determines that the carrier’s existing rules or practices are unreasonable. The Board also has established that its jurisdiction over such practices is construed broadly. *See* Ex Parte No. 661, *Rail Fuel Surcharges*, Decision served March 14, 2006 at 2. As the Board’s predecessor observed:

Not only must a carrier’s rates be reasonable, but so must its practices. . . .

This statutory requirement derives from the common law common carrier obligation. It is intended to protect against unreasonable carrier actions that impede interstate commerce. In evaluating carrier practices, “[t]he question is not whether the [questioned practice] can be described as ‘rational’ from the railroads’ perspective, but instead whether the practice . . . is reasonable when viewed from the public perspective of the Commission, which must reconcile a multitude of factors in exercising its expert judgment on tariff issues, including economy, efficiency, fair wages and working conditions, and safety, in addition to the financial conditions of the carriers.”

. . . Rail practices that the Commission has been asked to evaluate in recent years include collection of storage charges on empty rail cars awaiting loading, limiting the use of private cars, attempting to limit carrier liability and place responsibility on a shipper to make a “reasonable” inspection of grain cars, refusal to compensate a shipper for the use of its cars, and adoption of minimum weight rates where rail cars

were incapable of being loaded to the minimum weight. Other rail practices found unreasonable by the Commission have included a carrier's retroactive disavowal of a rate it had repeatedly quoted, and conditions making favorable rates dependent on a notation requirement. The Commission has also barred carriers from refusing to carry hazardous materials that have been certified as safe for transport.

. . . Unreasonable practices can result in abusive treatment of shippers. Federal oversight of railroad practices is therefore necessary and should be retained in order to protect the public interest.

See "Study of Interstate Commerce Commission Regulatory Responsibility Pursuant to Section 210(A) of the Trucking Industry Regulatory Reform Act of 1994," 1994 WL 639996 (October 25, 1994) (footnotes omitted).

The right to service upon reasonable request is one of the pillars of the common carrier obligation, and the Board has recognized that an element of such a request necessarily is the volume of traffic that a shipper intends to tender. See Finance Docket No. 34337, *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority*, Decision served July 27, 2005 at 4, citing Docket No. AB-405 (Sub-No. 1X), *LI Acquisition Corp. – Abandonment Exemption – In Montgomery County, PA*, Decision served August 23, 1994 at 9. Similarly, whether the type and/or scope of service that a carrier proposes to offer for the future is consistent with that carrier's legal duty properly may be informed by the carrier's past experience and familiarity with the needs of the shipper in question.

As discussed *supra*, UP and its predecessors have been involved in the unit train transportation of coal from the PRB to Montrose for more than twenty (20) years. Throughout that time, the focal point in terms of annual shipment volume has been on the *minimum* volume that KCPL would tender. {

} . See Part

IV at 4-5.

When UP established the challenged rates in Circular 111 Item 4140, it also unilaterally established an annual volume cap of 2,100,000 tons. This was without precedent in the history of UP coal service to Montrose, and was imposed over KCPL's protest. As explained in detail in Part IV, a 2,100,000 ton volume limitation seriously jeopardizes KCPL's ability to fully fuel one of its baseload generating assets, based upon current projections of electricity demand and related coal burn requirements.

In response to KCPL's objection to the volume cap and request that UP at least increase it to 2,400,000, UP initially expressed vague concerns about adequate capacity to handle an additional 300,000 tons for its long-time captive customer. However, any legitimate question about available capacity²⁵ was quickly belied by UP's

²⁵ Circular 111 Item 4140 establishes a minimum trainload requirement of 12,285 tons for shipments in aluminum railcars, which is the predominant equipment type. Based upon this minimum, the movement of 300,000 tons would require only 24 unit train cycles per year, or two trains per month.

subsequent representation that it might agree to handle the additional volume if KCPL paid a higher (\$15.84 per ton (not including the fuel surcharge)) "Option 1" rate for the service. *See* Part IV at 4.

Under the totality of the circumstances, UP's refusal to remove the volume cap, or increase it to a level that would meet KCPL's actual and projected transportation requirements, skirts its statutory common carrier duty and constitutes an unreasonable practice.

D. CONCLUSION AND PRAYER FOR RELIEF

Based upon the evidence presented herein, the Board should find that UP's Circular 111 Item 4140-Series rates (including fuel surcharges) applicable to Montrose shipments both in aluminum and steel railcars exceed maximum reasonable levels, and therefore are unlawful under 49 U.S.C. § 10701(d). Further, in light of the foregoing and in accordance with the provisions of 49 U.S.C. § 10704 (a), KCPL is entitled to a Board order prescribing the maximum rates that lawfully may be charged by UP to transport coal to Montrose. Such rates should be set at 180% of the variable cost of service, as determined in accordance with the evidence presented herein. *See* 49 U.S.C. § 10707 (d)(1)(A).

KCPL further requests that the Board award reparations, plus applicable interest, for overcharges imposed by UP from January 1, 2006 forward. These

overcharges equal \$8,064,148.47 through June 30, 2007 (before interest). See Exhibit II-A-7.

Finally, based upon the evidence presented herein, the Board should find that the 2,100,000 ton annual shipment volume limitation imposed by UP on KCPL's Montrose traffic constitutes an unreasonable practice in violation of 49 U.S. C. § 10702, and order either its deletion from Circular 111 Item 4140-Series entirely, or its revision to not less than 2,400,000 tons.

Respectfully submitted,

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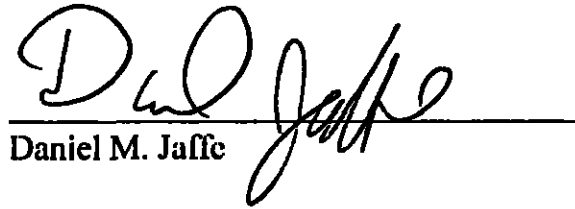
Dated: July 30, 2007

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2007, I caused three copies of the foregoing Opening Evidence Narrative (together with associated exhibits and workpapers) of Complainant Kansas City Power & Light Company to be served by hand upon the following counsel for Defendant Union Pacific Railroad Company:

Michael I. Rosenthal, Esq.
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Daniel M. Jaffe

)	
KANSAS CITY POWER & LIGHT)	
COMPANY)	
)	
Complainant,)	
)	Docket No. 42095
v.)	
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
)	

MARKET DOMINANCE--VARIABLE COSTS

UP has stipulated that it possesses qualitative market dominance with respect to coal service to Montrose, and that the maximum reasonable rates for that

service should be set at the jurisdictional threshold of 180% of variable costs. In this Part, KCPL presents the variable costs of transporting coal from mines in the PRB to the Montrose Generating Station.¹ This calculation draws on the 2006 URCS unit costs for UP (carrier specific) and MNA (2006 Western Regional). Herein, KCPL demonstrates that the challenged rates exceed the 180% revenue-cost percentage.

The rates and service terms for shipments in both aluminum and steel gondola cars contested by KCPL were established in Unit Train Coal Common Carrier Circular 111, and in Item 4140-Series of that Circular. *See* Exhibit I-1. KCPL's variable cost calculations include calculations for shipments in both types of equipment. These calculations demonstrate that the ratio of revenue to variable costs for transportation from the PRB mines produced by the challenged rates were between 194% and 220% during the period from 1Q06-2Q07.

¹ This Part addresses variable costs for the period 1Q06-2Q07. During that time, KPCI. shipped coal under the challenged aluminum car rates from five (5) mines located on the Orin Subdivision (also known as the "Joint Line"): Belle Ayr, Black Thunder, Black Thunder South, Caballo, and Jacobs Ranch. KCPL also shipped some coal under the challenged steel car rates from Belle Ayr, Black Thunder and Caballo. The variable costs presented herein are calculated individually for each mine for each quarter. Variable costs also are calculated at 2Q07 levels for service from the other origins to which the challenged rates apply but from which no shipments originated during the relevant period, based upon average shipment characteristics. *See* Exhibits II-A-1 and II-A-2.

1. Summary of Variable Cost Analysis and Resulting Revenue to Variable Cost Ratios

KPCL's principal calculation of UP's and MNA's variable cost of transporting coal from the PRB to the Montrose is based on the following approach:

- An analysis of nine (9) inputs typically used for an URCS Phase III analysis ((1) the railroad; (2) loaded miles (including loop track miles); (3) shipment type (local, originated delivered, bridge, received terminated); (4) number of freight cars; (5) tons per car; (6) commodity (for loss and damage expense only); (7) type of movement (single, unit, multiple); (8) car ownership (railroad or private); and (9) type of car);
- The use of the actual tare weight of the cars used in Montrose service;
- The use of 2006 URCS variable cost data for UP and MNA (Western Region) indexed to each of the quarters represented in KCPL's calculations;
- The exclusion of costs associated with terminal switching, because terminal switching services are not performed on Montrose-bound trains; and
- The exclusion of costs associated with payments for the use of private cars, because no such allowance is applicable to the Montrose movement.

The challenged rates, including applicable fuel surcharges, took effect on January 1, 2006. During all relevant periods, KPCL has paid the applicable rate as adjusted by the fuel surcharges and Circular 111. The results of KCPL's calculations of variable costs for transporting coal from the PRB to Montrose for 1Q06-2Q07 are summarized in Tables II-A-1 and II-A-2 below:

TABLE II-A-1
Summary of Rate, Variable Cost and Ratio of Revenue to Variable Cost for
Orin Subdivision Mines to Montrose in Aluminum Cars- 1Q06 through 2Q07

Origin	Time Period	Rate/Ton	UP/MNA Combined Variable Cost	Ratio of Revenue to Combined Variable Cost
Belle Ayr	1Q06	\$16 96	\$7 90	215%
	2Q06	\$16 90	\$8 09	209%
	3Q06	\$17.57	\$8 36	210%
	4Q06	\$17 33	\$7.92	211%
	1Q07	\$17 59	\$7 98	220%
	2Q07	\$16 95	\$8.31	204%
Black Thunder	1Q06	\$16.89	\$7 70	219%
	2Q06	\$16 93	\$7 89	215%
	3Q06	\$17 56	\$8 15	216%
	4Q06	\$17 10	\$8 11	211%
	1Q07	\$17 48	\$9 01	194%
	2Q07	\$17 35	\$8 02	216%
Black Thunder South	1Q06	\$16 68	\$7.59	220%
	2Q06	\$17 05	\$7 80	218%
	3Q06	\$17.61	\$8 09	218%
	4Q06	\$17.59	\$7.67	229%
	1Q07	\$17 61	\$8 56	206%
	2Q07	\$17 35	\$8 06	215%

Origin	Time Period	Rate/Ton	UP/MNA Combined Variable Cost	Ratio of Revenue to Combined Variable Cost
Caballo	1Q06	\$17.36	\$8.02	216%
	2Q06	\$16.95	\$8.07	210%
	3Q06	\$17.54	\$8.37	210%
	4Q06	\$17.32	\$7.92	219%
	1Q07	\$17.60	\$8.00	220%
	2Q07	\$16.77	\$8.33	201%
Jacobs Ranch	1Q06	\$16.69	\$7.69	217%
	2Q06	\$16.92	\$7.95	213%
	3Q06	\$17.59	\$8.27	213%
	4Q06	\$17.22	\$8.29	208%
	1Q07	\$17.58	\$8.43	208%
	2Q07	\$16.88	\$8.14	207%
Antelope	2Q07	\$16.90	\$7.84	215%
Caballo Rojo	2Q07	\$16.90	\$8.24	205%
Coal Creek	2Q07	\$16.90	\$8.19	206%
Cordero	2Q07	\$16.90	\$8.20	206%
North Antelope	2Q07	\$16.90	\$7.89	214%
Rochelle	2Q07	\$16.90	\$7.90	214%

Private and railroad provided cars were used in Montrose service. The URCS Phase III variable cost per ton shown is an average of the cost per ton of privately provided cars and the cost per ton of railroad provided cars weighted on the percentage of each used in the quarterly movement from the specified origin. The percentage for each affected quarter and origin are shown in Table II-A-5.

TABLE II-A-2
Summary of Rate, Variable Cost and Ratio of Revenue to Variable Cost for
Orin Subdivision Mines to Montrose in Steel Cars – 2Q07

<u>Origin</u>	<u>Time Period</u>	<u>Rate/Ton</u>	<u>UP/MNA Combined</u> <u>Variable Cost</u>	<u>Ratio of Revenue</u> <u>to Combined</u> <u>Variable Cost</u>
Belle Ayr	2Q07	\$19.92	\$9.54	209%
Black Thunder	2Q07	\$19.92	\$9.31	214%
Caballo	2Q07	\$19.92	\$9.23	216%
Jacobs Ranch	2Q07	\$19.92	\$9.37	213%
Antelope	2Q07	\$19.92	\$9.06	220%
Caballo Rojo	2Q07	\$19.92	\$9.53	209%
Coal Creek	2Q07	\$19.92	\$9.47	210%
Cordero	2Q07	\$19.92	\$9.48	210%
North Antelope	2Q07	\$19.92	\$9.12	218%
Rochelle	2Q07	\$19.92	\$9.13	218%

Details of the above calculations are discussed *infra* and shown in Exhibits II-A-1 and II-A-2, and in KCPL's workpapers "KCPL Open Exhibit II-A-2 (steel all).XLS" and "KCPL Phase III – 2006 Revised 7-25-07 steel adjusted.XLS."

2. Traffic and Operating Characteristics

KCPL has used the URCS Phase III costing procedures described below to calculate the variable costs for the movement of coal from the PRB to the Montrose Station. In *Major Issues*, the Board explained the various phases of URCS and their purposes:

The URCS model determines, for each Class I railroad, the portion of each category of costs shown in the carrier's Annual Report to the Board (STB Form R-1) that represents its system-average variable unit cost for that cost category for that year. URCS consists of a series of computer programs and manual procedures organized into three phases. Phase I compiles the raw data provided by the carriers into a useable format, and then uses statistical estimation procedures to determine the proportion of specific expense account groupings that vary with changes in the volume of activity (such as running track maintenance, which varies with gross ton-miles). In Phase II, these cost/volume relationships are then used to develop the unit variable costs that allow costing of specific rail movements. Finally, in Phase III, these variable cost units are applied to specific movements via an interactive computer program that permits the user to enter data for the specific movements under consideration.

Id. at 47-48. The details of the traffic and operating characteristics utilized by KCPL in the URCS program are described below.

Before turning to those details, KCPL notes that the typical procedure for calculating variable costs in maximum rate proceedings was designed around 42 traffic and operating characteristics that the Board had previously determined were needed to establish "complete records in these proceedings." Docket No. 36114 (Sub-No.1), *Potomac Electric Power Co. v. Consolidated Rail Corporation, et. al.*, Decision served April 7, 1982 at 4. Coupled with movement specific unit cost adjustments, these individual inputs helped to carefully define and ultimately calculate a largely movement-specific assessment of variable costs. The Board repeatedly determined that movement-specific analyses were superior to the simple application of system-average costs.

Indeed, in Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines – Non-Coal Proceedings*,

Decision served December 31, 1996 at 28 n.104, the Board held that:

It is well established practice to allow movement-specific cost adjustments in rate cases for purposes of determining whether the 180% jurisdictional floor is exceeded. *E g , West. Tex. Util. Co v Burlington N.R R.*, Docket No 41191 (STB served May 3, 1996, slip op. at 75-88). Such adjustment – to reflect the actual cars used, actual lading weights, and actual train equipment, crew, and operations involved – are possible and appropriate where such information is known and differs from the carrier's system average data. Most such movement-specific adjustments are more likely to arise with unit-train traffic (because those train operations are more discrete and dissimilar from the carrier's general operation)

As discussed in Part I, KCPL submits that the Board's Decision in *Major Issues* to preclude the further use of movement-specific adjustments to system average costs undermines the accuracy of variable cost calculations, and it respectfully reserves the right to make a full evidentiary presentation on variable costs should the Board's Decision subsequently be modified.

a. Details of URCS Phase III Inputs and Procedures

Detailed below are the ten (10) URCS Phase III inputs that KCPL utilized in calculating the variable costs shown in Exhibits II-A-1 and II-A-2 and detailed in electronic workpapers "KCPL Open Exhibit II-A-1 Pages 1 and 2.XLS," "KCPL Open Exhibit II-A-1 Page 3 all.XLS," "KCPL Open Exhibit II-A-2 (steel all).XLS," "KCPL

Phase II with adj – 2006 Revised 7-19-07.XLS,” “KCPL Phase III – 2006 Revised 7-25-07 steel adjusted.XLS” and “KCPL Open Exhibit II-A-4.XLS,”

i. Railroad

Two railroads provide service for KCPL from the PRB to the Montrose Station. UP originates the traffic at the mines in the PRB. From that point, UP moves the traffic over the Joint Line, which is shared with BNSF Railway Company and connects both carriers to a series of mines located in Campbell and Converse Counties in Wyoming. UP exits the Joint Line at a point known as Shawnee Junction. From there the Montrose trains travel along UP track through major stations such as South Morrill and North Platte, Nebraska and Marysville, Kansas until the trains reach Kansas City. UP then interchanges the train with MNA, the railroad that moves Montrose-bound traffic to its destination.

The interchange with MNA is usually performed at { } in Kansas City. See UP’s response to Interrogatory No. 7 (electronic workpaper “Interrogatory No 7.pdf”). From there, MNA moves via trackage rights over UP to Pleasant Hill, where it enters MNA-controlled territory. The train is then moved south for delivery to the Montrose Plant. A similar process is performed with the empty train movement – although some elements, such as the interchange point, sometimes change. The typical route of movement is shown in Exhibit II-A-3.

For URCS-based calculation purposes, KCPL's witness Thomas Crowley calculated the variable costs separately for UP and MNA, then combined them. It was necessary to calculate the variable costs separately because the URCS unit costs that apply to the two railroads are not the same. The URCS data used for the UP portion of the move are derived from UP's R-1 as inputs into the URCS database. See electronic workpaper "UP06.zip." Mr. Crowley updated the data in the URCS database with UP's most recent annual R-1 data so that 2006 URCS unit costs could be applied.

MNA is not a Class I railroad, and therefore is exempt from the reporting requirements that apply to UP. Thus, it does not submit an annual R-1 report. See 49 C.F.R. Part 1201, General Instruction 1-1. Without such data or similar record keeping, it is impractical, if not impossible, to develop MNA-specific URCS data. Therefore, consistent with established agency practice and precedent, KCPL used Western Region URCS data. See electronic workpaper "West 06.zip".

The Western Region URCS data is based on a combination of Class I railroads operating in the West. This group of railroads includes UP, BNSF Railway, Kansas City Southern Railway and the Soo Line Railroad (CP Rail System). The use of Western Region URCS most likely suffers some flaws in accuracy, as none of the data is

based specifically on MNA costs. However, there are no other surrogates available to KCPL that are recognized by the Board.²

The parties agreed on the designation of the railroads in their June 8, 2007 filing. See electronic workpaper “6-8-2007 submission.pdf.”

ii. Loaded Miles

The loaded miles represent the distance from the origin point (*i.e.*, the mine loadout) to the destination (the rotary dumper at the Montrose Station). Thus, KCPL has included all loop track miles as well as all main track miles for the loaded route typically used by the Montrose coal traffic. See Exhibit II-A-3. KCPL’s mileage determination was based on a review of available routing data, timetables and track charts. The mileages were determined separately for the UP and MNA portions of the Montrose movement. The parties exchanged their mileage calculations early in June. Ultimately, the parties agreed on the loaded miles to be used for each origin and destination pair.³ The mileages are detailed in Table II-A-3 below:

² The use of regional URCS has been accepted in other contexts. *Use of URCS in the Calculation of Off-Branch Costs*, 8 I.C.C. 2d 203, 204 (1991).

³ See electronic workpaper “6-8-2007 submission.pdf.”

TABLE II-A-3 Mileages for UP and MNA Portions of Unit Coal Train Movements from the Listed <u>Origins to Montrose Generation Station</u>		
Origin	UP Miles	MNA Miles
Belle Ayr	{ }	{ }
Black Thunder	{ }	{ }
Black Thunder South	{ }	{ }
Caballo	{ }	{ }
Jacobs Ranch	{ }	{ }

iii. Shipment Type

The URCS Phase III program provides for four possible shipment types. The first is "local". A local movement is one in which the carrier handles the traffic all the way from origin to destination. The second type is "originated delivered." An originated delivered shipment is one where one carrier begins the shipment in the loaded direction and delivers it to another carrier. The third type of URCS Phase III shipment is "received terminated." In the received terminated movement, the carrier first receives the shipment through an interchange with another carrier. The received terminated carrier then delivers the shipment to its final destination. The fourth shipment type is "bridge." A bridge carrier neither originates nor terminates a shipment. Instead, the bridge acts as an intermediary between two other carriers.

The UP portion of the movement is an “originated delivered” shipment type. UP begins the loaded move at the mines and it delivers it in interchange to MNA. The MNA portion of the movement is a “received terminated” shipment type. MNA receives the traffic in interchange from UP and terminates the movement when it delivers the coal to Montrose.

These shipment types were used for each railroad, regardless of the origin. The parties agreed on the shipment types. *See* “6-8-2007 submission.pdf.”

iv. Cars Per Train

The average number of cars per train was derived from available waybill records produced in discovery. *See* electronic workpaper “KCPL 1Q06-1Q07 waybill.xls.” These figures were developed for each origin and for each quarter. Both parties developed their own calculation of cars per train, which were exchanged. The parties ultimately agreed on the average cars per train. *See* “6-8-2007 submission.pdf.” The average cars per train, which are the same for each railroad, are listed in Exhibit II-A-4 and shown in Table II-A-4 below:

TABLE II-A-4
Cars Per Train by Origin and Time Period for Unit
Coal Train Movements from the Listed
Origins to Montrose Generation Station

<u>Time Period</u>	<u>Belle Ayr</u>	<u>Black Thunder</u>	<u>Black Thunder</u> <u>South</u>	<u>Caballo</u>	<u>Jacobs Ranch</u>
1Q06	{ }	{ }	{ }	{ }	{ }
2Q06	{ }	{ }	{ }	{ }	{ }
3Q06	{ }	{ }	{ }	{ }	{ }
4Q06	{ }	{ }	{ }	{ }	{ }
1Q07	{ }	{ }	{ }	{ }	{ }

v. Car Ownership

Under the provisions of Circular 111 applicable to KCPL's Montrose traffic, KCPL provides the railcars necessary for the movement of its coal. However, at various times, it appears from records produced in discovery that some railroad-provided cars were used to ship coal to Montrose. *See* electronic workpaper "KCPL 1Q06-1Q07 Summary Repaired.xls." The parties have agreed on the percentage split for such cars as follows:⁴

⁴ *See* "6-8-2007 submission.pdf."

TABLE II-A-5 Car Ownership by Origin, Time Period and Type for Unit Coal Train Movements from the Listed Origins to Montrose Generation Station		
<u>Time Period & Origin</u>	<u>Private Aluminum</u>	<u>Railroad Aluminum</u>
Black Thunder 4Q06	{ }%	{ }%
Black Thunder 1Q07	{ }%	{ }%
Black Thunder South 1Q07	{ }%	{ }%
Jacobs Ranch 4Q06	{ }%	{ }%
Jacob Ranch 1Q07	{ }%	{ }%

vi. Tons Per Car

The average tons per car figures for trains bound for Montrose were derived from waybill records produced in discovery. See electronic workpaper “KCPI. 1Q06-1Q07 waybill.xls”. As with the cars per train, the parties exchanged their respective calculations and ultimately agreed on the tons per car calculation. See “6-8-2007 submission.pdf.” The average tons per car calculations were also determined based on car ownership. These calculations are detailed in Table II-A-6 below:

TABLE II-A-6
Average Tons Per Car by Origin and Time Period
for Unit Coal Train Movements from the Listed
Origins to Montrose Generation Station

<u>Origin</u>	<u>Time Period</u>	<u>Tons Per Car</u> <u>Private</u>	<u>Ton Per Car</u> <u>Railroad-Owned</u>
Belle Ayr	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Black Thunder	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Black Thunder South	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Caballo	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Jacobs Ranch	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }

vii. Car Type

The URCS Phase III system offers a variety of car type inputs. *See* electronic workpapers “URCS FRT CAR TYPE.xls” for a list. However, the URCS list does not account for all the important varieties within a given car type. Thus, for URCS Phase III purposes the car type for KCPL’s Montrose service is “gondola general service unequipped”,⁵ but URCS makes no distinction between, for example, steel and aluminum cars. To compound the problem, the basic URCS Phase III parameters do not include a specific input for the actual tare weight of the car.⁶

The tare weight of the car is an important operating characteristics with direct cost consequences. Therefore, as shown below, KCPL included the tare weight input in addition to the other nine (9) basic Phase III URCS inputs.

viii. Movement Type

The KCPL Montrose movement is a “unit train” operation under the URCS Phase III parameters. The parties have agreed on this input. *See* “6-8-2007 submission.pdf.”

⁵ The parties agreed on the car type. *See* “6-8-2007 submission.pdf.”

⁶ Tare weight is among the detailed inputs that the URCS program allows the operator to enter.

ix. **Commodity**

KCPL is shipping sub-bituminous coal, STCC classification 11. The parties have agreed on this input. *See* “6-8-2007 submission.pdf.”

x. **Tare Weight**

The average tare weights per car for shipments moving from each PRB origin mine to the Montrose station were derived from waybills and UP traffic and revenue data produced in discovery. *See* electronic workpapers “Tare.xls” and “Ladue_2005-2.xls”. These figures were developed by time period as well as by origin. The average tare weight per quarter by origin is shown in Table II-A-7:

TABLE II-A-7 Average Tare Weight Per Car by Origin and Time Period for Unit Coal Train Movements from the Listed <u>Origins to Montrose Generation Station</u>			
<u>Origin</u>	<u>Time Period</u>	Tons Per Car <u>Private</u>	Tons Per Car <u>Railroad-Owned</u>
Belle Ayr	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
<u>Origin</u>	<u>Time Period</u>	Tons Per Car <u>Private</u>	Ton Per Car <u>Railroad-Owned</u>
Black Thunder	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }

	4Q06	{ }	{ }
	1Q07	{ }	{ }
Black Thunder South	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Caballo	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }
Jacobs Ranch	1Q06	{ }	{ }
	2Q06	{ }	{ }
	3Q06	{ }	{ }
	4Q06	{ }	{ }
	1Q07	{ }	{ }

No special study was required to determine the tare weights. This information came directly from data kept in the normal course of business by UP.

While using only nine (9) Phase III inputs may have the virtue of administrative ease, it is unnecessary to so restrict the inputs where, as here, another input was readily derived from documents already produced in discovery. The fact that URCS Phase III is useful for quick calculations without the benefit of discovery does not mean that it is reasonable for regulatory costing purposes to ignore readily ascertainable and

essentially indisputable inputs that improve the accuracy of the calculations available to the regulator.

Additionally, as noted in Part I, KCPL included the tare weight in its calculations of variable costs because the inclusion of this input is an important qualifier for other inputs, such as car type.

b. Exclusion of Inapplicable Costs

KCPL has excluded two categories of costs that otherwise would be automatically included by the URCS Phase III program, but which represent elements of service that are not used by the Montrose movement.

i. Terminal Switching

KCPL's Montrose traffic is, as the parties agreed, unit train service. See electronic workpaper "6-8-2007 Submission.pdf." Furthermore, the origin and destination activities are performed on loop tracks without the general switching of cars. Likewise, KCPL's Montrose trains are not otherwise assembled, disassembled or switched in a terminal.

Per the Board's instruction in *Major Issues*, KCPL included all of the loop track miles when calculating the loaded miles input. See electronic workpaper "loaded miles_UP PRB Origin.xls." Thus, the origin and destination activities costs are fully accounted for. To avoid a double count and recognize the obvious fact that no terminal switching occurs on the Montrose movement, KCPL's witness Crowley set the terminal

switching minutes (at origin, destination and interchange) to zero minutes in the URCS Phase III program.

ii. Private Car Payments

As in the case of terminal switching, the URCS Phase III program automatically includes a system average allocation of private car allowance payments made by a railroad to a select group of shippers. However, as noted in Part I, Circular 111 Item 4140 specifically excludes any such mileage allowance payments in connection with KCPL's Montrose traffic.

Mr. Crowley excluded the mileage allowance payments from the URCS Phase III cost model by changing the detailed parameter for car mile rental costs to zero. Specifically, detailed parameter number 49 in the batch Phase III URCS costing process was changed from the system average default value to zero.

c. MNA Divisions

In Part I, KCPL discussed the operational facts and elements of the UP/MNA lease agreement that define the nature of MNA's share of the Montrose revenues; namely, that MNA is a line-haul participant in a joint line movement that receives a division of revenue as compensation for its service contribution.⁷

⁷ The Lease is included as Exhibit II-A-5. A highly confidential version of the Lease, including more recent, non-public amendments, is included as electronic workpaper "MNA Lease - HC.pdf."

As explained *supra*, KCPL's witness Crowley calculated the variable costs associated with the MNA movement based on Western Region URCS, and combined those variable costs with the costs he calculated for UP's portion of the Montrose movement. Consistent with established procedures for costing joint carrier line-hauls, Mr. Crowley treated the division received by MNA as an offset to UP's revenues.

d. Indexing

URCS is calculated on an annual basis. In order to determine the variable costs by quarter, KCPL has indexed the 2006 costs that it developed to each quarter to reflect the wage and price levels applicable to the quarter being examined. KCPL followed Board-approved procedures for the indexing it performed. *See* ICC's IE3-80 indexing procedures supplemented by Ex Parte No. 411, *Complaints Filed Under Section 229 of the Staggers Rail Act of 1980*, 365 I.C.C. 507 (1980), and *Wisconsin Power & Light Company, supra*, at 1005-1006. *See also* electronic workpapers "UP06 Phase III Index inc R01.xls" and "Western Region Phase III index inc R01.xls." KCPL notes further that the composite index that it utilized for indexing is a general or price-inflation index, not a cost index. Thus, no adjustments for railroad productivity are reflected in the indexing process.⁸

⁸ Productivity adjustments and their impact have been repeatedly recognized by the Board and others. *See Railroad Cost Recovery Procedures-Productivity Adjustment*, Decision served March 24, 1989; *Railroad Accounting Principles, Final Report* by Railroad Accounting Principles Board, September 1, 1987; Ex Parte 290 (Sub-No. 4). *Improving Railroad Productivity*, Final Report of the Task Force on Railroad

e. Cost of Capital

KCPI. has used the Board's most recent railroad industry cost of capital determination in calculating the variable costs for the movement of coal to the Montrose Station. *See Ex Parte No 558 (Sub-No. 9), supra* This cost of capital equals 17.9% before taxes, based upon the statutory tax rate. As discussed in Part I, however, KCPL endorses reform of the cost of capital methodology in the manner advocated by WCTL, and reserves the right to modify its cost calculations and/or seek reconsideration of any findings by the Board in this case, based on subsequent changes in that methodology.

f. Rates and Resulting R/VC Ratios

When compared with the common carrier rate levels set by Circular 111 (including the fuel surcharge), the UP/MNA variable cost levels produce revenue-to-variable cost ratios that range from 194% to 220% for shipments in aluminum and steel railcars for the 1Q06-2Q07 time period. Revenue-to-variable cost ratios for all movements are greater than 180%. *See Tables II-A-1 and II-A-2.*

Productivity. A Report to the National Commission on Productivity and the Council of Economic Advisors, Washington, D.C., November 1973. *See also ICC, Proceedings Productivity Measurement Conference, November 26, 1974.*

3. Alternative Variable Cost Calculations

As discussed above and in Part I, failure to reflect actual tare weights for the KCPL railcars and exclude terminal switching and private car allowance costs from the variable cost calculations burdens KCPL with phantom costs and improperly biases the outcome in UP's favor. To demonstrate the magnitude of this bias, KCPL performed an URCS Phase III calculation which ignores the KCPL car tare weights and runs the program using the first nine (9) inputs described by KCPL in the traffic and operating characteristics section *supra*, without excluding terminal switching and private car allowance costs. Before performing the calculation, however, KCPL's witness Crowley separately corrected certain errors in the R-1-related inputs for the UP-specific 2006 URCS database, as explained below.

a. Correction to UP's Terminal Switching Costs

UP's 2005 and 2006 Form R-1's contain faulty information related to train switching hours, which leads to a misallocation of total costs between running and switching functions when developing URCS terminal (origin, destination and interchange) switching costs.

To demonstrate the problem, KCPL has used the UP 2005 R-1 and URCS data, because 2005 is the last year that the STB released URCS formulas. These same problems described below also are included in UP's 2006 R-1 and URCS formula that was developed and used in KCPL's evidence.

TABLE II-A-8
Comparison of Switching Service Units of Major Class I Railroads - 2005

	<u>UP</u>	<u>BNSF</u>	<u>CSX</u>	<u>NS</u>
1 Train Switching Locomotive Unit Miles <u>1/</u>	29,234	4,844	7,716	8,488
2 Train Switching Hours <u>2/</u>	2,181	319	1,286	834
3 Carload Originations & Terminations <u>3/</u>	21,032	18,959	18,814	18,287
4 Carloads Received or Delivered <u>4/</u>	6,923	5,406	2,245	3,612

1/ Annual Report R-1, Schedule 755, Line 12 (000)

2/ Annual Report R-1, Schedule 755, Line 116 (000)

3/ LRCS B6L21C01

4/ LRCS H6L216C08

Table II-A-8 shows that UP reported train switching locomotive unit miles (Line 1) are over 500 percent greater than the same metric reported by BNSF, almost 300 percent greater than the same metric reported by CSX Transportation ("CSXT") and almost 250 percent greater than the same metric reported by Norfolk Southern Railway ("NS"), even though these carriers handle approximately the same amount of traffic (Lines 3 and 4).

Table II-A-8 also shows that UP reported train switching hours (Line 2) are almost 600 percent greater than the same metric reported by BNSF, 70 percent greater than the same metric reported by CSXT, and over 150 percent greater than reported by NS.

The train switching locomotive unit miles and train switching hours are used to allocate annual costs between switching and running functions in UP's R-1 and in URCS. Table II-A-9 shows these allocation factors for the four railroads evaluated.

TABLE II-A-9					
<u>Allocation Factors For Separating Total Costs Between Switching and Running In URCS - 2005</u>					
<u>Item</u>		<u>UP</u>	<u>BNSF</u>	<u>CSX1</u>	<u>NS</u>
(1)		(2)	(3)	(4)	(5)
<u>Maintenance</u>					
1	Allocated Total Yard and Road Switching Maintenance/Depre-ROI 1/	21.5%	12.9%	13.5%	5.8%
2	Allocated Total Running Maintenance/Depre-ROI 2/	<u>78.5%</u>	<u>87.1%</u>	<u>86.5%</u>	<u>94.2%</u>
3	Total	100.0%	100.0%	100.0%	100.0%
<u>Road Operations</u>					
4	Allocated Total road Switching Operations Expense/Depre-ROI 3/	9.6%	1.6%	8.8%	8.4%
5	Allocated Total Running Operations Expense/Depre-ROI 4/	<u>90.4%</u>	<u>98.4</u>	<u>91.2%</u>	<u>91.6%</u>
6	Total	100.0%	100.0%	100.0%	100.0%
<u>Yard Operations</u>					
7	Allocated Total Yard Switching Operations	100.0%	100.0%	100.0%	100.0%
8	Allocated Total Running Yard Operations	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>
9	Total	100.0%	100.0%	100.0%	100.0%
<hr/> 1/ Line 3 - Line 2 2/ URCS B31.209C04 3/ URCS D8L417C01 divided by URCS D3L191C05 4/ Line 6 - Line 4					

By reviewing the allocating factors in the “Maintenance” and “Road Operations” portions of Table II-A-9, it is apparent that because of the misallocation of train switching metrics identified in Table II-A-8, UP has misstated the total allocated dollars to the different switching functions (Table II-A-9, Lines 1 and 4).

Once the Table II-A-9 allocated switching dollars are calculated in URCS, they are converted to a cost per switch engine minute. The 2005 URCS cost per switch engine minute for the four railroads evaluated are summarized in Table II-A-10 below.

TABLE II-A-10					
<u>Switch Engine Minute Unit Costs</u>					
	<u>Item</u>	<u>UP</u>	<u>BNSF</u>	<u>CSXT</u>	<u>NS</u>
	(1)	(2)	(3)	(4)	(5)
1	Switch Engine Minute Yard Maintenance/Depre-ROI Unit Cost <u>1/</u>	\$2 654	\$2 549	\$1 999	\$1 178
2	Switch Engine Minute Road Operations Expense/Depre-ROI Unit Cost <u>2/</u>	\$1 761	\$0 490	\$1 153	\$1 026
3	Switch Engine Minute Yard Operations Expense/Depre-ROI Unit Cost <u>3/</u>	<u>\$2 433</u>	<u>\$3 506</u>	<u>\$2 555</u>	<u>\$2 392</u>
4	Total Switch Engine Minute Unit Cost <u>4/</u>	\$6 848	\$6 545	\$5 708	\$4 596
1/	URCS (D8L 720C01 x D8L 607C01) + (D8L 720C02 x D8L 608C01) - (D8L 720C03 x D8L 609C01)				
2/	URCS (D8L 721C01 x D8L 607C01) - (D8L 721C02 x D8L 608C01) + (D8L 721C03 x D8L 609C01)				
3/	URCS (D8L 722C01 x D8L 607C01) - (D8L 722C02 x D8L 608C01) + (D8L 722C03 x D8L 609C01)				
4/	Line 1 + Line 2 + Line 3				

Table II-A-10 demonstrates that UP's 2005 switching engine minute cost (Column (2)) is substantially higher than any of the other three similar sized railroads in the comparison group.

The next step in the evaluation process is to compare the switching minutes per event for the road switching component. Table II-A-11 below makes this demonstration for the UP and the other three comparably sized railroads that were evaluated.

TABLE II-A-11				
<u>Road Switching Minutes Per Carload - 2005</u>				
<u>Item</u>	<u>UP</u>	<u>BNSF</u>	<u>CSX1</u>	<u>NS</u>
(1)	(2)	(3)	(4)	(5)
1 Train Switching Hours <u>1/</u>	2 181	319	1 286	834
2 Percentage of Switching Hours Required for Industry Switching <u>2/</u>	50 022%	57 370%	65 364%	64 931%
3 Percentage of Switching Hours Required for Interchange Switching <u>3/</u>	9 056%	8 998%	4 291%	7 054%
4 Carload Originations and Terminations <u>4/</u>	21,032	18,959	18,814	18,287
5 Carloads Received or Delivered <u>5/</u>	6,923	5,406	2,245	3,612
6 Train Switching Minutes per Industry Event <u>6/</u>	3 112	0 579	2 681	1 777
7 Train Switching Minutes per Interchange Event <u>7/</u>	1 712	0 319	1 475	0 977
<u>1/ Annual Report R-1 Sch 755 Line 116 (000)</u> <u>2/ URCS B6L217C01</u> <u>3/ URCS B6L217C10</u> <u>4/ URCS B6L216C01</u> <u>5/ URCS B6L216C08</u> <u>6/ Line 1 x 60 x Line 2 / Line 1</u> <u>7/ Line 1 x 60 x Line 3 / Line 5</u>				

Table II-A-11 demonstrates that UP's road switching minutes per carload for system average originations or terminations are considerable greater than the same metric for the other railroads evaluated (Line 6). A similar conclusion is drawn when UP's road switching minutes per carload for a system average interchange event is compared to other evaluated railroads (Line 7). Given the similarities among the railroads in terms of traffic volume, mix, system operation, etc., there is no logical explanation for such disparities.

By combining UP's overstated cost per switch engine minute from Table II-A-10 with UP's overstated train switching minutes from Table II-A-11, UP's system average train switching cost per carload can be developed, as shown in Table II-A-12 below.

TABLE II-A-12				
<u>Train Switching Cost Per Carload - 2005</u>				
<u>Item</u>	<u>UP</u>	<u>BNSF</u>	<u>CSXT</u>	<u>NS</u>
(1)	(2)	(3)	(4)	(5)
1 Train Switching Minutes per Industry Event <u>1/</u>	3 112	0 579	2 681	1 777
2 Train Switching Minutes per Interchange Event <u>2/</u>	1 712	0 319	1 475	0 977
3 Total Switch Engine Minute Unit Cost <u>3/</u>	\$6 848	\$6 545	\$5 708	\$4 596
4 Train Switching Industry Cost per Carload <u>4/</u>	\$85 259	\$15 162	\$61 205	\$32 664
5 Train Switching Interchange Cost per Carload <u>5/</u>	\$23 446	\$4 170	\$16 836	\$8 983
<u>1/</u> Table 4 Line 6 <u>2/</u> Table 4 Line 7 <u>3/</u> Table 3, Line 4 <u>4/</u> Line 1 x Spot Pull Ratio- 20 x 2 Terminals x Line 3 <u>5/</u> Line 2 x Empty Return Ratio- 20 x Line 3				

Table II-A-12 compares UP's 2005 system average cost per carload for train switching at origin and destination to the other three railroads evaluated (Line 4). Table II-A-12 also compares UP's 2005 system average cost per carload for train switching at interchange to the other railroads evaluated (Line 5). In both cases, UP's system average train switching costs are higher than those of BNSF, CSXT and NS by margins that cannot be explained by differences in the nature of the railroads' operations. The logical conclusion is that UP has misallocated switching minutes in its reporting, which if not corrected, obviously would skew any calculation of variable costs that includes terminal switching.

Because KCPL does not have access to UP data supporting its 2006 Annual Report Form R-1, KCPL followed the procedures used by the STB in developing its "URCS Phase III formula when questionable data is identified. The STB describes this process as follows:

"We have substituted surrogate values in the URCS Phase III data bases where the values calculated by Phase II of URCS seem questionable. For example, we made replacements for negative values, values generated from scant data, poor data, missing data, etc. We lifted these substitute values from the best alternative data available and entered them into the Phase III files for the users' convenience. However, users should apply known actual costs and/or operating statistics when they can."⁹

The solution employed by the STB when questionable data is identified is to substitute regional values for the questionable data. Table II-A-13 below identifies the substituted 2006 western regional values that were used in lieu of the questionable 2006 UP switching data in developing costs presented in Exhibit II-A-6.

⁹ Section of Rail Costing, Uniform Railroad Costing System (URCS), Phase III Data Substitutions See electronic workpaper "Substitutions 2003 doc".

TABLE II-A-13

Solution For Union Pacific Misallocation Of Road Switching - 2006

	<u>Item</u>	<u>Western Region 1/</u>
	(1)	(5)
1	Switch Engine Minute Unit Cost Operating Expense 2/	\$4 32486
2	Switch Engine Minute Unit Cost Depr-Leases Expense 3/	\$0 45814
3	Switch Engine Minute Unit Cost ROI Expense 4/	<u>\$1 60632</u>
4	Total Switch Engine Minute Unit Cost 5/	\$6 38932
5	Switch Engine Minutes per Industry Switch 6/	
a	Train Switching	0 834
b	Yard Switching	<u>4 669</u>
c	Total	5 503
6	Switch Engine Minutes per Interchange Switch 7/	
a	Train Switching	0 459
b	Yard Switching	<u>2 568</u>
c	Total	3 027

1/ Western Region URCS Excluding Union Pacific

2/ 2006 Western Region URCS Excluding Union Pacific F11111C01

3/ 2006 Western Region URCS Excluding Union Pacific F11111C02

4/ 2006 Western Region URCS Excluding Union Pacific F11111C03

5/ Line 1 + Line 2 + Line 3

6/ 2006 Western Region URCS Excluding Union Pacific F21104C25

7/ 2006 Western Region URCS Excluding Union Pacific F21104C26

In developing the Phase III costs displayed in Table II-A-6, the terminal switching costs per minute and the switching minutes appearing in Table II-A-13 were substituted for the questionable 2006 UP data.

b. Rates and Resulting R/VC Ratios

Exhibit II-A-6 demonstrates the significant distortion in variable costs, and ultimately the jurisdictional threshold, that occurs when the KCPL car tare weights are ignored and non-existent terminal switching and private car allowances are assumed to be part of the Montrose service. KCPL submits that the Board's and the governing statute's interest in accurate adjudication of the variable costs clearly supports the operating parameter corrections that KCPL has made. *See, e.g.*, 49 U.S.C. §§ 10101(13) and 11163.

BEFORE THE
SURFACE TRANSPORTATION BOARD

<hr/>		
KANSAS CITY POWER & LIGHT)	
COMPANY)	
)	
Complainant,)	
)	Docket No. 42095
v.)	
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
<hr/>		

PART III

STAND-ALONE COSTS

As stated in Part I, KCPL and UP have stipulated that the challenged rates exceed the maximum levels produced by application of the stand-alone cost constraint of the *Coal Rate Guidelines*.

BEFORE THE
SURFACE TRANSPORTATION BOARD

)	
KANSAS CITY POWER & LIGHT)	
COMPANY)	
)	
Complainant,)	
)	Docket No. 42095
v.)	
)	
UNION PACIFIC RAILROAD COMPANY)	
)	
Defendant.)	
)	

PART IV

UNREASONABLE PRACTICE¹

UP's establishment of a 2,100,000 ton cap on the volume of coal that KCPL can ship to the Montrose Station annually constitutes an unreasonable practice under 49 U.S.C. § 10702. As explained below, KCPL's expected baseload generation requirements from the Montrose Station make it likely that KCPL will burn in excess of 2.1 million tons for at least the next five (5) years, and the historic pattern of UP service to Montrose has been to hold out to transport 100% of the station's PRB requirements. Inasmuch as KCPL has no alternative means of transporting coal to Montrose, UP's 2.1 million ton cap under Item 4140 of Circular 111 makes its common carrier service terms

¹ The evidence presented in Part IV is sponsored by Messrs. David Laffère and Edward Blunk. Mr. Laffère is KCPL's Manager of Fuels, and Mr. Blunk is KCPL's Manager of Fuel Planning.

inadequate to meet KCPL's reasonable request. Therefore, KCPL respectfully requests that the Board order UP to eliminate the cap, or at least raise it to 2.4 million tons.

A. Background

KCPL has responsibility for the generation, transmission, distribution and sale of electric power to more than 505,000 residential, commercial and industrial consumers throughout a 4,700 square-mile service area encompassing all or parts of 24 counties in western Missouri and eastern Kansas. To meet the generation requirements of its customers, KCPL relies upon four (4) wholly or partly-owned coal-fired generating facilities, and a forty-seven percent (47%) interest in the 1,166 megawatt, Wolf Creek Nuclear Generating Station. As noted in Part I, KCPL's coal-fired capacity is comprised of the 657 megawatt Iatan Station (70% owned by KCPL), the 1,418 megawatt LaCygne Station (50% owned by KCPL), the 563 megawatt Hawthorn Station, and the 510 megawatt Montrose Station. The Montrose and Hawthorn Stations are 100% owned by KCPL. Together with the Wolf Creek Station, the coal-fired facilities provide KCPL with 2,790 megawatts of baseload generating capacity. In addition, KCPL maintains 1,265 megawatts of gas and oil-fired peaking capacity, and a wind energy generation facility capable of producing 100 megawatts, for a total of 4,155 megawatts.

KCPL also is a member of the Southwest Power Pool ("SPP"), which is a regional transmission organization ("RTO") operating with the approval of the Federal Energy Regulatory Commission. The SPP is responsible for maintaining the reliability of the electric system throughout its service territory, which encompasses all or part of eight (8) states, and for coordinating the planning and operations of the transmission systems

under its control. As a member of the SPP, KCPL is required to maintain a capacity margin of at least 12% of its projected peak Summer demand. KCPL maintains this reserve through its generation assets, power purchase agreements and peak demand reduction programs. The capacity margin is designed to ensure the reliability of the electric transmission and generation systems in the event that an electric generating station experiences an operational failure. Such protections inure to the benefit of all members of the SPP.

B. Historical Shipments to Montrose and Circular 111

UP and its predecessors have provided service from the PRB to the Montrose Station for over 20 years under various contracts. The most recent contract, UP-C-30239, expired at the end of 2005. In the last few years of the contract, KCPL shipped PRB coal in the volumes shown in Table IV-1.

TABLE IV-1 Historical Volume of PRB Coal Shipments to the Montrose Generating Station	
2001	1,850,364
2002	1,671,593
2003	1,626,543
2004	1,935,438
2005	2,034,397

Particularly in 2004 and 2005, KCPL saw a steady increase in the amount of coal being burned at the Montrose Station, such that for the first time coal *burn* exceeded 2.1 million tons in 2005. At the time, the rise in the required volumes of coal was not a matter of concern, because {

} In fact, prior to UP's conversion to the Circular 111 pricing platform, KCPL's relationship with UP largely focused on ensuring that KCPL met the minimum annual volume requirements under the contract. More volume was never perceived as a problem; {

}

UP's unprecedented inclusion of a 2.1 million ton volume cap in its Circular 111 publication poses an immediate threat to KCPL's ability to meet its future coal needs, which are driven both by demand and by the mix of coal quality available for dedication to Montrose.² It also compromises KCPL's program to rebuild its coal inventory to deal with the risk of UP service interruptions, which have been serious and recurrent.

By letter dated December 22, 2005, KCPL requested that UP revise the volume limit, citing the reasons noted above. *See* electronic workpaper "12-22-05 letter.pdf." By letter dated December 29, 2005, UP declined to make the requested adjustment. *See* electronic workpaper "12-29-05 letter.pdf."³

² Montrose utilizes both 8800 and 8400 Btu coal. When supply considerations restrict the availability of 8800 Btu coal, KCPL must acquire and burn more tons of 8400 Btu coal to meet equivalent generation levels.

³ While UP appeared to recognize that it could not completely eschew its common carrier responsibilities, it nevertheless implied that a higher rate of \$15.84 (not including the fuel surcharge) would apply.

C. Projected Coal Requirements for Montrose

KCPL has determined that its future coal requirements for the Montrose Station will average more than 2.1 million tons per year through 2012. As is typical in the electric utility industry, KCPL's forecast includes an expected and a high scenario for Montrose. The forecasts are shown in Table IV-2. *See also* electronic workpaper "Tons Required.xls."

TABLE IV-2 Projected Volume of PRB Coal Shipments to the Montrose Generating Station		
<u>Year</u>	<u>Expected Scenario (8400 Btu/lb)</u>	<u>High Scenario (8400 Btu/lb)</u>
2007	2,102,574	2,228,600
2008	2,105,867	2,219,433
2009	2,096,581	2,229,944
2010	2,090,350	2,174,100
2011	2,267,504	2,392,003
2012	2,158,681	2,259,652
Average	2,136,926	2,250,622

The factors driving the above projections are addressed in the balance of this Part.

D. Anticipated Load Growth

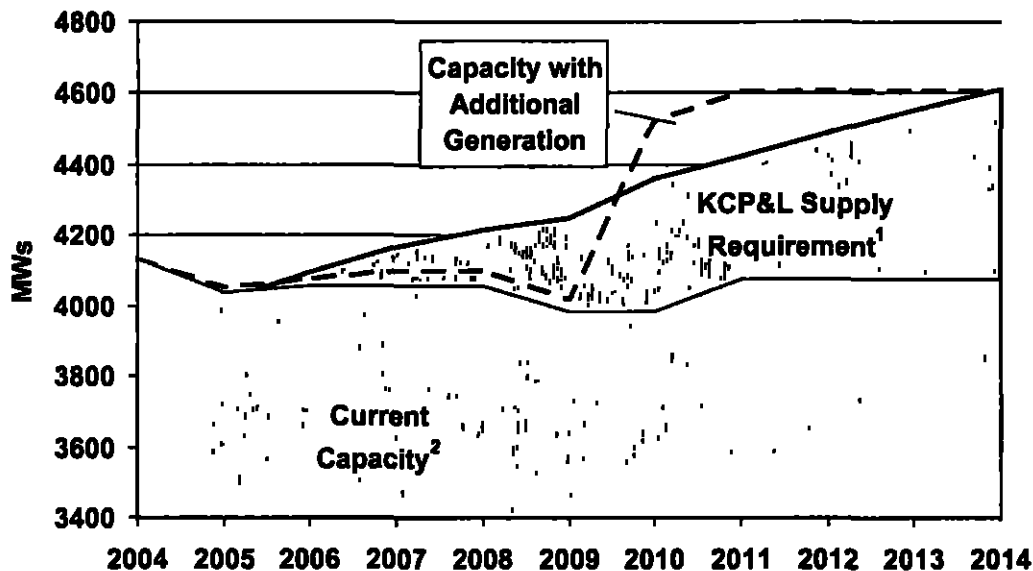
As noted above, KCPL's Montrose Station is part of a larger generation portfolio owned or partly owned by KCPL. KCPL utilizes a comprehensive energy plan to determine how to meet its customers' needs. The broad strokes of the energy plan are ultimately filtered down to requirements by plant, and then fuel by plant.

KCPL's most recent projections of load growth for the next five years show an expectation that electric demand easily will outpace the capacity of its current

generation base, as shown in the chart below – the driving factors are shown in the next subpart.

Generation Need

KCP&L Supply Needs & Capacity



¹ Supply requirements include estimated average annual load growth of approximately 2%, plus the required 12% reserve margin

² Current capacity changes with expiration of capacity contracts

See electronic workpaper “regulatory presentation.pdf” (also available from

http://www.greatplainsenergy.com/investor/presentations/MO_RegAgree_32905.pdf)

With the anticipated shortfall in generation assets noted in the chart, KCPL has secured approval for a second unit at its Iatan Station, as well as the wind energy capacity referenced *supra*. See, e.g., Case No. EO-2005-0329, *In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company*, (Mo. PSC) (“*Proposed Regulatory Plan*”). While the Iatan project is expected to be completed in 2010, KCPL’s generation resources still are not expected to exceed the anticipated

demand for electricity over the long term. *See chart supra.* Clearly, all existing generation resources will be utilized at or near their maximum capacity for the foreseeable future.

Like its other assets, KCPL expects to continue to utilize most of the maximum available generating capacity at Montrose to meet its baseload needs. Historically, the Montrose plant's capacity utilization typically ranged from 50% to 64%. More recently, however, the plant has operated at 72% of its capacity. KCPL's anticipated load growth means that Montrose, particularly as a baseload plant, reasonably can be expected to operate at or above current utilization levels. *See* electronic workpaper "Montrose Capacity Factors.xls." The expected utilization of the Montrose facility directly affects KCPL's coal requirements for the plant. All likely scenarios indicate that KCPL will need to ship more than 2.1 million tons of coal to Montrose annually.

E. Factors Driving the Growth in Demand

KCPL's forecast for overall future load growth has been accepted and confirmed by the Missouri and Kansas Public Service Commissions. *See Proposed Regulatory Plan, supra.* (decision issued July 28, 2005) and Docket No. 06-KCP-828-RTS, *In the Matter of the Future Supply, Delivery and Pricing of the Electric Service Provided by Kansas City Power & Light Company*, (decision issued August 5, 2005). KCPL submits that the Board should take administrative notice of this forecast in considering the evidence presented. However, KCPL briefly will describe the factors driving the future demand for electricity.

The Kansas City metro area is in the midst of a major expansion of its population and business development. According to the Mid-America Regional Council, the area's population is expected to grow by approximately 20% over the next 25 years. KCPL ultimately will serve most of these new customers.

While population growth and expanding business are major factors in the anticipated need for additional electricity, customers also are using more energy than in the past. Indeed, average household energy use is up 42% since 1986. See <http://www.kcpl.com/cep/faqs7.html#WhyPlan>. Based on forecasts developed by KCPL, the demand for electricity in the Kansas City area will grow at an annual rate of approximately two percent (2%) for the next 10 years. *Id. see also* electronic workpaper "IRP Documentation.pdf" for more details on KCPL's demand forecast.

F. Dispatch Modeling

KCPL translates the expected overall demand for electricity into a resource-by-resource level plan with modeling tools. Even though Montrose is a baseload plant, and will be operating at or near fully capacity most times except during a plant outage, KCPL's integrated resource planning model (known as MIDAS) includes consideration of Montrose as a generating source:

MIDAS is a state of the art, integrated system dispatch model and financial model used for forecasting, budgeting and resource planning. This model allows the user to input a range of expected costs for key drivers such as fuel price, unit operating costs, construction costs, system load growth, etc. . . . The model then utilizes stochastic simulations to provide a range of results for various alternative resource plans and various future states for key drivers.

Proposed Regulatory Plan, Direct Testimony of John R. Grimwade (KCPL) at 6 (July 13, 2005). The MIDAS model was the primary tool used to develop the tonnage levels shown in Table IV-2.

G. Southwest Power Pool

An additional factor impacting the expected output of the Montrose Station relates to recent changes made by the SPP. In February 2007, the SPP implemented a new energy imbalance service market. This new market has new charges and penalties which effectively change the economics of KCPL's system dispatch, resulting in higher projected burns at Montrose. In particular, the SPP's dispatching penalties disfavor the use of the Montrose plant for spinning reserve purposes thereby enhancing its baseload role. This further confirms that Montrose will dispatch at a greater level for all periods.

H. Summary

UP's unilateral imposition of a volume cap represents a break from the established pattern of unit train coal transportation service to Montrose that has been in place for over 20 years. As shown above, the 2.1 million ton annual limit that UP has established will severely jeopardize KCPL's ability to meet near-term projected generation requirements.

BEFORE THE
SURFACE TRANSPORTATION BOARD

KANSAS CITY POWER & LIGHT COMPANY)	
Complainant,)	
v.)	Docket No. 42095
UNION PACIFIC RAILROAD COMPANY)	
Defendant.)	

PART V

WITNESS QUALIFICATIONS AND VERIFICATIONS

This Part contains the Statements of Qualifications of the witnesses who are responsible for the Narrative portions of WFA/Basin's opening evidence (and the exhibits and workpapers referred to therein) identified with respect to each witness.

1. DAVID L. LAFFERE

Mr. Laffere is the Manager of Fuel for KCPL. The specific evidence that Mr. Laffere is sponsoring relates to the relevant background information regarding the Montrose Generating Station and KCPL's relationship with UP as presented in Part I. Mr. Laffere is also co-sponsoring (with Mr. Blunk) the unreasonable practice evidence presented in Part IV.

Mr. Laffere has been in his position with KCPI. for approximately two (2) years. Prior to that time he was the Supervisor, Fuel Logistics and he has held other positions within KCPI.. In total, he has 24 years of experience in the utility industry.

VERIFICATION

I, David L. Laffere, verify under penalty of perjury that I have read the Opening Evidence of Kansas City Power & Light Company in this proceeding that I have sponsored or co-sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


David L. Laffere

Executed on July 26, 2007.

2. THOMAS D. CROWLEY

Mr. Crowley is an economist and President of L.E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, marketing, and transportation problems. The specific evidence Mr. Crowley is sponsoring relates to quantitative market dominance, and specifically the defendant railroads' variable cost of transporting the complainant's traffic (Part II-A).

Mr. Crowley is a graduate of the University of Maine from which he obtained a Bachelor of Science degree in Economics. He has also taken graduate courses in transportation at The George Washington University in Washington, D.C. He spent three years in the United States Army and has been employed by L.E. Peabody & Associates, Inc. since February, 1971. He is a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

As an economic consultant, Mr. Crowley has organized and directed economic studies and prepared reports for railroads, freight forwarders, and other carriers, for shippers, for associations, and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies in which he has participated include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both

eastern and western origins to various destinations in the United States. The nature of these studies enabled Mr. Crowley to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, Mr. Crowley and/or his associates have inspected both railroad terminal and line-haul facilities used in handling unit train coal movements from the Eastern Coal Fields to various utility destinations in the southeastern portions of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal.

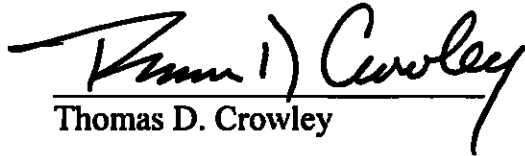
Mr. Crowley presented testimony before the ICC in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide, which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs. He has submitted evidence applying the ICC's (now the Board's) stand-alone cost procedures in numerous rail rate cases. He has also developed and presented numerous calculations utilizing the various formulas employed by the ICC and Board (both Rail Form A and URCS) to develop variable costs for rail common carriers. In this regard, Mr. Crowley was actively involved in the development of the URCS formula, and presented evidence to the ICC analyzing the formula in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations.

As a result of his extensive economic consulting practice since 1971 and his participating in maximum-rate, rail merger, and rule-making proceedings before the ICC and the Board, Mr. Crowley has become thoroughly familiar with the operations,

practices and costs of the rail carriers that move coal over the major coal routes in the United States.

VERIFICATION

I, Thomas D. Crowley, verify under penalty of perjury that I have read the Opening Evidence of Kansas City Power & Light Company in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Thomas D. Crowley

Executed on July 30, 2007.

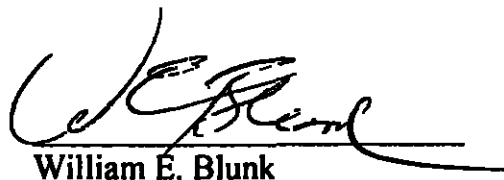
3. WILLIAM E. BLUNK

Mr. Blunk is the Supervisor of Fuel Planning for KCPL. The specific evidence that Mr. Blunk is co-sponsoring (with Mr. Laffere) relates to the unreasonable practice evidence presented in Part IV.

Mr. Blunk has been in the Manager of Fuel Planning or a similar position with KCPL for 23 years. Prior to that time he was an analyst for KCPL. In total, he has 25 years of experience in the utility industry.

VERIFICATION

I, William E. Blunk, verify under penalty of perjury that I have read the Opening Evidence of Kansas City Power & Light Company in this proceeding that I have co-sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


William E. Blunk

Executed on July 26 2007.



UP CIRCULAR 111

UNIT TRAIN COAL COMMON CARRIER CIRCULAR

APPLYING ON:

UNIT COAL TRAINS FROM THE POWDER RIVER BASIN OF WYOMING

Governed, except as otherwise provided herein, by UFC 6000-series;
UP 6004-series and UP 6603-series.

Issued By:
G.H. OSLER - PUBLICATION MANAGER
K.A. EYMANN - PUBLICATION MANAGER

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

Issue	August 18, 2005
Effective	March 31, 2004
Expiration	December 31, 2015

UP 111

GENERAL RULE ITEM 1 (Revision A)

DEFINITION OF ITEM SYMBOLS

A - Add
 C - Change
 D - Decrease
 I - Increase
 X - Expire

Issued August 18, 2005
 Effective March 31, 2004
 Expiration December 31, 2025

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GENERAL RULE ITEM 5 (Revision J)

Item Re-Issued: Aug. 18, 2005 Effective: Aug. 23, 2005

Symbol	Index of General Items
	Item/Version
	001A Definition of Item Symbols
C	005J Index of Items
	100E General Rules and Definitions
	200A Service/Rate Selection Option 1
	300D Service/Rate Selection Option 2
	400E Form - Shipment Volume Commitment Certificate
	Index of Rate Items
	Ultimate Destination
I	2510E CO, Pueblo, Comanche Generating Station
I	3120E IA, Muscatine, Muscatine Generating Station via Clinton, IA interchange
I	3130F IA, Cedar Rapids, Prairie Creek or Sixth St. Gen. Stations via Cedar Rapids, IA interchange
I	3140E IA, Marshalltown, Sutherland Generating Station
I	3212B IL, Chicago, KCBX Terminal for furtherance to specified plants
I	3215C IL, Cora, for furtherance to specified plants
	3221A IL, Coffeen, Coffeen Generating Station rail direct via UP-NS
	3230B IL, Joppa, Electric Energy Inc.
	3236 IL, Sommer, Edwards Plant
	3236 IL, Meredosia, Meredosia Generating Station via barge
	3236 IL, Lis, Newton Generating Station via Chicago interchange with CSX
C,I	4000A IL, Chicago and WI, Superior for furtherance to specified plants
	3310F IN, Michigan City, Michigan City Generating Station via Chicago, IL interchange
	3310F IN, Wheatfield, Schahfer Generating Station via Chicago, IL interchange
	3500A KY, Calvert City, via UP-CNIC-PAI, for furtherance to specified plants
I	3620D LA, Rodemacher, Rodemacher Generating Station
	4120B MO, St. Joseph, Lake Road Generating Station
	4130B MO, Sibley, Sibley Generating Station via Kansas City Interchange
	4140C MO, Ladue, Montrose Generating Station
	4150B MO, Hill Crest, Meramec Generating Station
I	4160D MO, Rush Tower, Rush Island Generating Station via barge
I	4160D MO, West Alton, Sioux Generating Station via barge
	4170B MO, West Labadie, Labadie Power Plant
I	4210E MN, St. Paul, High Bridge Generating Station
	4710B NC, Grand Island, Platte Generating Station
I	4720D NE, Hastings, Whelan Generating Station
	5330A OH, Warrenton, via UP-NS-WF for furtherance to specified plants
A	5331 OH, Warrenton, via UP-NS-WF for furtherance to specified plants
A	5332 OH, Warrenton, via UP-CSX-WF for furtherance to specified plants
I	6110F TX, Smithers Lake, Parish Generating Station
I	6620C WI, Wisconsin Rapids, Kraft Div. Plant
I	6620C WI, Biron, Biron Div. Plant via Wisconsin Rapids Interchange
I	6620C WI, Stevens Pt, River Div. Plant via Wisconsin Rapids Interchange
I	6630D WI, Alma, Alma Generating Station via barge
I	6610D WI, Genoa, Genoa Generating Station via barge
I	6640D WI, Cassville, Dewey Generating Station via barge
C	6630F WI, Pleasant Prairie and Oak Creek, Pleasant Prairie Power Plant and Oak Creek Power Plant
I	9010B Export to Spain via Cora, IL

GENERAL RULE ITEM 100 (Revision E)
 Item Re-Issued Mar 4, 2005 Effective Apr 1, 2005

General Rules and Definitions

For purposes of applying this Circular, the following will govern.

Commodity/Coal: Coal, a mineral substance whose Standard Transportation Commodity Code (STCC) as set forth in the Standard Transportation Commodity code tariff ICC STCC 6001-Series, begins with the two digits 11. This Circular does not apply to dried, enhanced or beneficiated coal (synthetic coal), having the STCC number 29-911-91.

Origin(s): UP served coal mine origins in Campbell and Converse counties in the Southern Powder River Basin of Wyoming.

Destination(s): Rail station capable of receiving trainloads of Coal as specified in individual Rate Items.

Shipper: Party who is paying the freight charges under this Circular

UP: Union Pacific Railroad Company

Railroad: UP and any other rail carrier that is a party to this Circular for a joint rate to the specified Destination as listed in Items 1000-9999 of this Circular.

Rates: Are in U.S. dollars and cents per net ton of 2,000 lbs. Rates apply only for Coal consumed at the station(s) noted in the Item Description of the Rate Item, unless otherwise provided.

Rate Item: Schedule of rates, charges, and terms applicable to particular Destination.

Diversions: Diversions may be permitted under certain circumstances, as provided in UP Circular 6603-Series

Request for Service: Transportation under this Circular will take place on the Southern Powder River Basin joint line which is subject to intense use. In order to maximize the utilization of the rail lines and loading facilities for the benefit of all parties involved in transportation of Coal from Origins, UP must coordinate with its joint owner of the rail line, the mine operators, and Shippers. Shipper requesting transportation under this Circular must provide a "Monthly Coal Tonnage Forecast" as provided in Item 250 of UP Circular 6603-Series. That Item defines the monthly process for the submission of forecasts by both the receiver of coal and the producer(s) who will load those tons for shipment via UP. This condition applies in addition to any specific notice requirements stated in this Circular.

Shipper Owned or Leased Equipment: Means railcars owned, leased or otherwise furnished by Shipper for transportation under this Circular.

Railroad Owned or Leased Equipment: Means railcars owned, leased or otherwise furnished by Railroad for transportation under this Circular.

Equipment: If Rate Item for Destination specifies Shipper Owned or Leased Equipment, Shipper will provide suitable equipment at no charge to Railroad. Railcars shall be compatible with the loading facility and the unloading facility.

All railcars used for transportation under this Circular shall be open-top hopper or gondola railcars, and shall have a marked capacity sufficient to meet the Minimum Lading Weight per Railcar as specified in the Rate Item for Destination.

Loaded railcars shall not exceed the maximum gross-weight-on-rail ("GWOR") associated with the route of movement, but in no case greater than 286,000 lbs. In some corridors the GWOR will be less than 286,000 lbs, in which case Railroad will note in the applicable Rate Item the maximum weight capability on the route of movement.

Such railcars shall also meet or exceed the Association of American Railroads ("AAR") Interchange Rules, as amended from time to time, and shall have been inspected and approved by UP for safety in accordance with Federal Railroad Administration ("FRA") regulations, as amended from time to time.

Issued August 18, 2003
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Transportation under this Circular is subject to the provisions of the AAR Interchange Rules, including those rules governing railcar repair, maintenance, damage, or destruction, in a manner prescribed by the "Field Manual of Interchange Rules" and the "Office Manual of the Interchange Rules" adopted by and currently in use by the AAR. UP also recommends compliance with UP CMI 950302 (Car Maintenance Instructions) as outlined in Item 225 of UP 6603-Series.

Freight Charges: Freight charges shall be calculated based on the greater of the actual lading weight of all Coal in a train as determined by weighing pursuant to the rules in UP Circular 6603-Series, or the minimum tender per shipment weight, which is specified by Destination in the Rate Item. If Railroad owned or leased equipment is properly loaded, and if solely due to Railroad, fewer than the number of railcars required to meet the minimum tender per shipment are provided to load, freight charges will be based on the actual lading weight.

Payment: Railroad may invoice Shipper by means of mail or electronic transfer of documentation. Shipper shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice. Late payment and other credit terms shall be in accordance with UP's credit terms as published in Rule 62 of UFC 6000-Series. If Shipper fails to pay in accordance with the requirements or if, in UP's sole discretion, adverse credit conditions occur which could affect Shipper's ability to meet payment terms, UP may revoke credit privileges and institute any one or more of the Revocation of Credit and Other Remedies procedures outlined in UFC 6000.

Notices: Notices to UP should be addressed to:

Attn: General Director -Logistics and Demand
Union Pacific Railroad
Marketing and Sales Energy Group
Stop 1260
1400 Douglas Street
Omaha, NE 68179
Fax (402) 501-0163

Notices to CNIC should be addressed to:

Attn: AVP Coal Marketing
Canadian National Railway
234 Donald Street
Winnipeg, MB, Canada R3C 4B4
FAX (204) 934-7375

Notices to Norfolk Southern should be addressed to.

Attn: Senior Vice President Energy & Properties
Norfolk Southern Corp.
110 Franklin Road
Roanoke, VA 24042-0026
FAX (540) 985-6398

Notices to Paducah & Louisville Railway should be addressed to

Attn: AVP Marketing & Sales
Paducah & Louisville Railway
1500 Kentucky Ave.
Paducah, KY 42003
FAX (270) 444-4388

Notices to Wheeling & Lake Erie Railway should be addressed to.

Attn: VP Coal Marketing
Wheeling & Lake Erie Railway
100 East First Street
Brewster, OH 44613
FAX (330) 767-7021

Other General Rules: Shipments made under this Circular shall be subject to Circular UP 6603-series or its successors, which contains the General Loading Rules, Accessorial Charges and Fuel Surcharge for Coal Trains

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Originating in Wyoming and related items.

Services or other matters not specifically addressed in this Circular shall continue to be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, rules circulars, publications or in other applicable rate and service terms established under 49 U.S.C. Section 11101. Such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations or provisions as they relate to the parties hereto are inconsistent with the terms of this Circular, the terms of this Circular shall govern. When reference is made in this Circular to tariffs, circulars, items, notes, rules, etc., such references are continuous and include revisions and supplements to and successive issues of such tariffs, circulars, items, notes, rules, etc.

In the event of any conflict between the terms of this Circular and the terms of the Rate Item, the provisions of the Rate Item shall govern.

Issued August 18, 2005
Effective March 31, 2004
Expiration December 31, 2025

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GENERAL RULE ITEM 200 (Revision: A)
 Item Re-Issued August 2, 2004

Service/Rate Selection: Option 1

OPTION 1: Unit Train Shipments - No Volume Requirement

These terms and conditions will apply to transportation under this Circular if Shipper elects Option 1

Volume: No volume commitment applies under this option.

Annual Volume Estimate: For planning purposes, Shipper shall advise Railroad of its intent to ship under this Circular as specified in Monthly Coal Tonnage Forecast. In addition, not later than October 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). Shipper shall attempt to load Coal in approximately even monthly increments within each calendar year. If Shipper decides to begin shipments within any time-frame other than a full calendar year basis, then Shipper shall provide Railroad an Annual Volume Estimate for the remaining months of that calendar year, ninety calendar days prior to the first shipment, unless otherwise mutually agreed.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes, denial of or limitation of access to track controlled by any party other than Railroad, or events outside the control of the Railroad. Railroad intends to use reasonable efforts to deliver the Annual Volume Estimate and the Monthly Coal Tonnage Forecast furnished by Shipper but has no binding obligation to comply with these planning estimates.

Rate: Option 1 rate in the Rate Item applies in return for the limited liability terms as follows. In exchange for paying the rate published in Option 1 of the Rate Item, Shipper agrees that in no event will Railroad's responsibility for damages exceed the sales price of the Coal at Origin. The fuel surcharge in UP Circular 6603-Series, Item 690 applies. Railroad may adjust rates subject to 20 days' notice for increases.

Full-Value Liability Rate: In return for paying a rate greater than the Option 1 rate as published in the Rate Item, Shipper may recover full damages, if any, as provided in 49 U.S.C. 11706. To make a shipment subject to 49 U.S.C. 11706, Shipper must comply with these provisions.

- 1 Shipper shall notify Railroad no less than 72 hours before the shipment is released for transportation that the Shipper chooses to utilize the Full-Value Liability Rate.
- 2 Shipper shall prepay a rate equal to 250% of the Option 1 Rate published in the Rate Item applicable to Destination; and
- 3 Shipper shall note on the shipping instructions that the shipment is subject to the Full Value Liability Rate as provided in this Circular.

GENERAL RULE ITEM 300 (Revision: D)
 Item Re-Issued Jun 8, 2005 Effective July 1, 2005

Service/Rate Selection: Option 2

OPTION 2: Unit Train Shipments - Three-year or Longer Volume Commitment

Option 2 rates in the Rate Item will apply only if Shipper agrees to be bound by the Minimum Volume Requirement as set forth in the Rate Item by executing the Volume Commitment Certificate ("Certificate") found in Item 400 of this Circular. In return for Shipper's volume commitment, Railroad commits to transport Coal loaded by Shipper and moving in Shipper Owned or Leased Equipment, subject to these terms and conditions ("Service Commitment") and to charge rates as defined by Volume Year in the Rate Item and fixed as of the date of the Certificate subject to adjustment only by fuel surcharge ("Rate Commitment"). If Shipper elects to utilize Railroad Owned or Leased Equipment, as specified in the Rate Item applicable to a Destination, Shipper will receive Rate Commitment in return for its volume commitment.

I. Definitions and Rules

Volume Commitment Period: Volume Commitment Period consists of 36 or more consecutive months during which the Minimum Volume Requirement, Rate Commitment and Service Commitment (if applicable) are in force. A Volume Commitment Period comprises three or more consecutive Volume Years or 12 or more consecutive Volume Quarters. A Volume Commitment Period may begin on the first day of any calendar quarter not less than ninety (90) days and not more than twenty-four (24) months after Shipper submits signed Certificate. The maximum duration of the Volume Commitment Period will be determined by the rate columns offered in the Rate Item.

Volume Year: Volume Year consists of 12 consecutive calendar months. A Volume Year also consists of four consecutive Volume Quarters. A Volume Year does not have to coincide with a calendar year, but the starting date for the first Volume Year must coincide with the first day of the Volume Commitment Period and will always begin on the first day of a calendar quarter.

Volume Quarter: Volume Quarter consists of three consecutive calendar months. A Volume Quarter must correspond to a calendar quarter. The starting date for the first Volume Quarter must coincide with the first day of the Volume Commitment Period.

Certificate Submission: When Shipper submits the Certificate electing to ship under Option 2, the Certificate must include a good faith, non-binding estimate of the amount of Coal Shipper projects shipping between Origins and Destination for each Volume Quarter during the Volume Commitment Period. The estimate will be used only for planning purposes. The completed Certificate shall be submitted to Railroad (to the address/fax number stated in the notices section of Item 100) not less than ninety (90) days and not more than twenty-four (24) months before the Volume Commitment Period begins. Certificates are not assignable. In the event of a conflict between the terms of a Certificate and the terms of a contract, the terms of the contract shall govern.

Commitment Rate: The rate applicable for each Volume Year for transportation subject to respective volume and service commitments ("Commitment Rate") is found in Columns 2 and above in the Rate Item applicable to Destination. The Commitment Rates shall be the rates in the Rate Item on the date Shipper submits the Certificate. No adjustments other than the fuel surcharge will apply to the Commitment Rates during the Volume Commitment Period. Subject to 20 days' notice for an increase, Railroad may adjust the Commitment Rates at any time before UP receives signed Certificate for a Destination. Shipper Certificates received after notice of a rate increase but before the rate increase becomes effective will take the increased rate.

Minimum Volume Requirement: Shipper choosing Option 2 commits to load for transportation a minimum volume of Coal from Campbell and Converse counties in Wyoming via the route specified in the Rate Item in each Volume Year during Volume Commitment Period. The "Minimum Volume Requirement" for a Destination is specified in the Rate Item for that Destination.

If the Minimum Volume Requirement contains a percentage requirement, Shipper shall send a written statement within thirty (30) days after the end of Volume Year to Railroad certifying: (1) the total number of tons of Coal received via any transportation mode at Destination originating in Campbell and Converse Counties in Wyoming, (2) the total number of tons of Coal on which freight charges were paid under this Circular, and (3) whether the Shipper has satisfied the Minimum Volume Requirement. If Shipper fails to satisfy the Minimum Volume Requirement,

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Railroad shall be entitled to compensation in the form of Liquidated Damages as determined below.

Liquidated Damages: If Shipper fails to meet its Minimum Volume Requirement, Shipper shall pay Railroad, not as a penalty, but as compensation for lost traffic in the form of liquidated damages, agreed upon as reasonable, and intended by the parties to be the sole and exclusive remedy for Shipper's failure to meet the Minimum Volume Requirement, an amount equal to \$3.00 for each shortfall ton

II. Service Commitment for Moves in Shipper Owned or Leased Equipment

A. Service Commitment: Railroad commits to transport for each Volume Quarter and Volume Year the amount of Coal nominated by Shipper as provided herein.

Ninety (90) days before each Volume Year, Shipper will nominate in good faith the number of tons of Coal it wishes Railroad to transport to Destination for the upcoming Volume Year by month. The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the aggregate Volume Year total. If Shipper uses both Shipper Owned or Leased Equipment and Railroad Owned or Leased Equipment, this nomination shall specify the tons designated for transportation in Shipper Owned or Leased Equipment. The "Service Commitment Volume" will be the lesser of (a) the aggregate of the nominated tons for the Destination for each Volume Quarter or (b) the aggregate of tons nominated for the Destination in the Monthly Coal Tonnage Forecast Process specified in UP Circular 6603-Series, Item 250, for the same Volume Quarter. The Service Commitment applies only to those tons committed by Shipper as determined by the Service Commitment Volume.

B. Cycle Time Estimate: Cycle Time Estimate is the Railroad round-trip transit time between Origin and Destination, and is provided in the Rate Item for each Destination requiring Shipper Owned or Leased Equipment as a good faith estimate for equipment planning purposes only. Cycle Time Estimate does not include loading or unloading time, time elapsed for delays caused by events of Force Majeure, or time elapsed for delays caused or requested by Shipper or Shipper's mine operator. Actual cycle time will vary and may be above or below the Cycle Time Estimate. If the Rate applies only to an interchange with another rail carrier, the Cycle Time Estimate is for loaded and empty time on UP only.

C. Shipper Owned or Leased Equipment: If the Rate Item for the Destination specifies Shipper Owned or Leased Equipment, Shipper and Railroad will mutually agree on the number of trainsets Shipper will provide to transport the Service Commitment Volume. Railroad reserves the right to limit the number of trainsets in service whenever, in Railroad's sole judgment, the addition of more trainsets will impair fluidity or would not materially increase the amount of Coal delivered to Destination. Railroad limitation on the number of trainsets below the number mutually agreed-upon with Shipper shall not relieve Railroad of its Service Commitment except as otherwise provided in D. Service Commitment Performance or IV. Force Majeure.

D. Service Commitment Performance: If Shipper loads Coal at a ratable monthly pace and Railroad fails to transport Coal made available for timely loading by Shipper or Shipper's mine operator for reasons attributable solely to the Railroad, Shipper has the right to notify Railroad of its calculation of tons required to meet the Service Commitment Volume for the previous Volume Quarter. Such notification must be made no later than fifteen (15) business days after the term of the Volume Quarter has expired.

Railroad shall not be responsible for tonnage shortfalls attributable to the following

- 1 Delays resulting either directly or indirectly from events, actions, and/or requests attributable to Shipper or Shipper's mine operator,
- 2 Delays in loading or unloading (except where such delays are caused in substantial part by Railroad),
- 3 Inability of Shipper's mine operator to load Coal or inability at Destination to unload Coal,
- 4 Insufficient supply of Shipper Owned or Leased Equipment, except when Railroad limits the number of trainsets furnished by Shipper,
- 5 Force Majeure events affecting either party, or
- 6 Limitation on access to trackage not within Railroad's sole control, provided that Railroad make reasonable efforts to regain access or to remove limitation

In addition, if Rate Item applies only to the UP portion of an interline route, UP shall not be responsible for delays attributable to connecting carrier's inability to accept trains at interchange or delays on the connecting carrier's portion of the route. If Shipper fails to meet its Minimum Volume Requirement due to Railroad's service failure, or Railroad's limitation of trainsets furnished by Shipper, Shipper's Minimum Volume Requirement will be adjusted downward for such failures.

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Once Railroad receives notice of Shipper's calculation of tons required to meet the Service Commitment Volume, Railroad shall have fifteen (15) business days to respond. When Shipper and Railroad have agreed in writing upon the amount of Coal required to satisfy the Service Commitment Volume ("Shortfall Volume") Railroad shall have ninety (90) days to satisfy the Service Commitment by any means deemed appropriate by the Railroad, including the use of Railroad Owned or Leased Equipment at the same freight rate in effect during Volume Quarter when shortfall arose. Shipper shall work with Railroad to ensure availability of Coal at Origins to load Shortfall Volume tons. If Railroad transports more Coal to a Destination than the Service Commitment Volume during a Volume Quarter, that extra Coal shall be credited against any Shortfall Volumes occurring in the following four Volume Quarters. Coal transported during a Volume Quarter using additional resources provided by Railroad shall be credited against any Shortfall Volumes for the previous Volume Quarter or credited toward future Shortfall Volumes, if any. If Shortfall Volume occurs in a Volume Quarter and Shortfall Volume has not been cured by application of credits for prior surplus deliveries or deliveries in the 90-day period following agreement on Shortfall Volume, Shipper shall be entitled to appropriate compensation in the form of Liquidated Damages as determined below.

E. Liquidated Damages: If Railroad fails to meet its Service Commitment, Railroad shall pay Shipper, not as a penalty, but as compensation for obtaining an alternate fuel supply or any other damages, in the form of liquidated damages, agreed upon as reasonable, and intended by the parties to be Shipper's sole and exclusive remedy for Railroad's failure to meet its Service Commitment, an amount equal to \$3.00 for each un-cured shortfall ton. Shipper shall invoice Railroad by means of mail or electronic transfer of documentation. Railroad shall pay the amount invoiced by means of mail or electronic transfer of funds within 15 calendar days after date of invoice.

III. Service for Moves in Railroad Owned or Leased Equipment

Annual Volume Estimate: Not later than October 1 each year, Shipper shall provide to Railroad an estimate of tons of Coal anticipated to be loaded in the next calendar year by month ("Annual Volume Estimate"). The nominated tonnage must be ratable. A monthly nomination is ratable if it is no more than 10% greater or 10% less than one-twelfth of the aggregate Volume Year total.

Service: Railroad shall use reasonable efforts to transport Coal based on the circumstances when the transportation occurs. Railroad shall not be responsible for delays due to weather, track maintenance or construction, equipment failures, embargoes, Acts of God, labor activities, including strikes or events outside the control of the Railroad. Railroad intends to use reasonable efforts to meet the lesser of the Annual Volume Estimate for a Destination or the aggregate annual total of the Monthly Coal Tonnage Forecast furnished by the Shipper, but has no binding obligation to comply with these planning estimates. In no event will Railroad's responsibility for damages exceed the value of Coal at Origin. If Shipper fails to meet its Minimum Volume Requirement due solely to Railroad's service failure, Shipper's Minimum Volume Commitment for that Volume Year will be adjusted downward for such failure.

IV. Force Majeure:

If any party is delayed in or prevented from the performance of its obligations under this Circular for at least twenty-four (24) consecutive hours, beginning from the time disability actually commenced, as a result of an event beyond its control, including an Act of God; accumulation of snow and/or ice or other adverse weather conditions sufficient to impede the movement of trains or train crews, war, insurrection, riot or other civil disturbance; explosion, fire, derailment, destruction of or damage to right-of-way, including bridges; strike, lockout or other labor disturbance; the failure of the Mine Operator to load requested Coal ("Force Majeure"), such party's obligations and those of such other parties affected thereby shall be suspended for the duration of such Force Majeure, PROVIDED, HOWEVER, that the parties shall make all reasonable efforts to continue to meet their obligations for the duration of the Force Majeure.

In order for a declaration of Force Majeure to be effective, the party experiencing the Force Majeure event shall notify in a timely fashion and in writing all other parties as to the nature of the Force Majeure, when it began, and its projected duration. Such party also shall notify in a timely fashion and in writing all other parties upon the cessation of the Force Majeure.

The parties shall make all reasonable efforts to eliminate or abate such Force Majeure and resume their obligations expeditiously upon its cessation, except that no party hereto will be required to acquiesce to an unfavorable settlement of any labor dispute.

The suspension of any obligations owing to a Force Majeure shall neither cause the term of any Volume Commitment Certificate to be extended nor affect any rights accrued under any Volume Commitment Certificate prior to the Force Majeure. The Minimum Volume Requirement shall be reduced by 1/365th and the Service Commitment Volume shall be reduced by 1/90th for each continuous 24-hour period during which the Force Majeure event existed.

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GENERAL RULE ITEM 400 (Revision, E)
 Item Re-Issued Mar 4, 2005 Effective Apr 1, 2005

Circular 111 Option 2 Volume Commitment Certificate

Certificate # _____
 (Assigned by UP)

Shipper Name: _____
 Address: _____

Circular 111, Rate Item _____, for Rate Item Destination: _____
 Interchange/Connection if applicable: _____
 If alternative option exists in Rate Item, Equipment Furnished by:
 Railroad _____ Shipper _____ Both _____

First Date of Volume Commitment Period: _____
 (Must be the first day of a calendar quarter, not less than 90 days or more than 24 months after signed Certificate is submitted)

Last Date of Volume Commitment Period: _____
 (Must be the last day of a calendar quarter, 36 or more months after commencement date, in increments of 12 months, as determined by rate columns offered in the Rate Item)

Volume Commitment Period Good-Faith Estimate of Tonnage: _____
 (If both Shipper Owned or Leased Equipment and Railroad Owned or Leased Equipment, specify volumes for each)

Volume Year 1

Volume Quarter 1: _____
 Volume Quarter 2: _____
 Volume Quarter 3: _____
 Volume Quarter 4: _____

Volume Year 3

Volume Quarter 9: _____
 Volume Quarter 10: _____
 Volume Quarter 11: _____
 Volume Quarter 12: _____

Volume Year 2

Volume Quarter 5: _____
 Volume Quarter 6: _____
 Volume Quarter 7: _____
 Volume Quarter 8: _____

(Use attachment for additional
 Volume Years if applicable)

By signature below, Shipper acknowledges the reciprocal benefits under Option 2 terms and conditions and agrees to be bound by the applicable terms and conditions set forth in this Circular and Rate Item associated with Destination. All of the Option 2 terms and conditions set forth in Circular 111 will be held constant for the term of this Certificate, as well as the Fuel Surcharge mechanism set forth in UP Circular 6603-Series at the time of Certificate receipt. If a change has been announced but is not yet in effect, the announced term, condition and/or rate will apply.

By Shipper _____

Title _____

Date _____

Fax to: (402) 501-0163


Attention: General Director Logistics and Demand, Union Pacific Railroad Energy Marketing and Sales

Issued August 18, 2005
 Effective March 31, 2004
 Expiration December 31, 2025

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 Concluded on this page

Exhibit B

 <p>UP 111</p>	<p>Item: 4140-C Item Desc: MO, Ladue (Henry County) Montrose Generating Station</p>	
<p align="center">Unit Coal Trains from SPRB to Montrose Generating Station, Ladue (Henry County), MO</p>		
<p align="center">For billing purposes use the following rate authority: UP 111-4140-C</p>		
STCC/GROUP	STCC	DESCRIPTION
11		Coal
<p>Prices are subject to Fuel surcharges</p> <p>GENERAL RULE ITEM 4140 (Revision A) Railroad's Cycle Time Estimate in Shipper Owned or Leased Equipment is 138 hours, subject to terms and conditions in Item 300 of Circular UP 111.</p> <p>Minimum Volume Requirement for Option 2 rates is the greater of either 95 percent of Net Tons received at Montrose Generating Station, Ladue (Henry County), MO from Campbell and Converse Counties in Wyoming via all modes of transportation, or 1,600,000 Net Tons annually. The maximum volume that Railroad will transport under this item is 2,100,000 Net Tons annually.</p>		
<p>GENERAL RATE APPLICATION RULES FOR ITEM 4140-C</p>		
<p>1 Free time to unload will be 6 hour(s)</p>		
<p>2 Mileage allowance payment on private equipment will not apply</p>		
<p align="center">APPLICATION AND RATES</p>		
COLUMN	RATE APPLICATION RULES	
1	<p>Rates are in U.S. dollars Per Net Ton</p> <p>Subject to a minimum lading weight of 117 tons per car</p> <p>Price applies in shipper owned or leased equipment</p> <p>Price applies if minimum tender per shipment is 12,285 Net Ton(s) Price applies if minimum tender per shipment is 1 Train</p>	
2	<p>Rates are in U.S. dollars Per Net Ton</p> <p>Subject to a minimum lading weight of 117 tons per car</p> <p>Price applies in shipper owned or leased equipment</p> <p>Price applies if minimum tender per shipment is 12,285 Net Ton(s) Price applies if minimum tender per shipment is 1 Train</p>	
3	<p>Rates are in U.S. dollars Per Net Ton</p>	
<p>Issued May 9, 2005</p> <p>Effective July 1, 2005</p> <p>Expiration December 31, 2025</p>	<p align="center">UP 111</p>	<p>Page 1 of 2</p> <p>Item 4140-C</p> <p>Continued on next page</p>

COLUMN	RATE APPLICATION RULES					
4	Subject to a minimum lading weight of 117 tons per car					
	Price applies in shipper owned or leased equipment					
	Price applies if minimum tender per shipment is 12,285 Net Ton(s). Price applies if minimum tender per shipment is 1 Train.					
	Rates are in U S dollars Per Net Ton.					
	Subject to a minimum lading weight of 117 tons per car					
	Price applies in shipper owned or leased equipment					
Price applies if minimum tender per shipment is 12,285 Net Ton(s) Price applies if minimum tender per shipment is 1 Train						
		Col. 1 Option 1	Col. 2 Option 2 Year 1	Col. 3 Option 2 Year 2	Col. 4 Option 2 Year 3	Route Code/Group
STCC: 11 Coal						
From: ENERGY SPRB MINES GROUP						
To: MO, LADUE		15 84	14 26	14 83	15 42	UP
NOTES	DESCRIPTION					

Issued May 9, 2005
 Effective July 1, 2005
 Expiration December 31, 2025

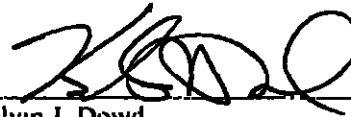
LP 111

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 Item 4140 L
 Concluded on this page

CERTIFICATE OF SERVICE

Pursuant to 49 C F R Part 1111.3, I hereby certify that on this 12th day of October, 2005, I caused copies of this Verified Complaint to be served by overnight express courier on the senior legal officer of Defendant Union Pacific Railroad Company ("UP") as follows

J Michael Hemmer, Esq
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

A handwritten signature in black ink, appearing to read 'K. Dowd', is written over a horizontal line.

Kelvin J. Dowd
An Attorney for Complainant

EXHIBIT II-A-1
REDACTED

Phase III Variable Results For Steel Cars Using Actual Operating Parameters 1/

	<u>Time Period</u> (1)	<u>To Montrose</u>										
		<u>Belle Avr</u> (2)	<u>Black Thunder</u> (3)	<u>Black Thunder South</u> (4)	<u>Caballo</u> (5)	<u>Jacobs Ranch</u> (6)	<u>Antelope</u> (7)	<u>Caballo Rojo</u> (8)	<u>Coal Creek</u> (9)	<u>Cordero</u> (10)	<u>North Antelope</u> (11)	<u>Rochelle</u> (12)
1	<u>2Q07 2/</u>											
	a UP	\$7 89	\$7 66	\$7 58	\$7 91	\$7 72	\$7 41	\$7 88	\$7 82	\$7 83	\$7 47	\$7 48
	b MNA	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65	\$1 65
	c Total	\$9 54	\$9 31	\$9 23	\$9 56	\$9 37	\$9 06	\$9 53	\$9 47	\$9 48	\$9 12	\$9 13
	d 2Q07 Steel Rate 3/	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92	\$19 92
	e Ratio of rate to variable cost 4/	2 09	2 14	2 16	2 08	2 13	2 20	2 09	2 10	2 10	2 18	2 18

1/ Based on UP 2006 URCS for the UP portion of the movement and Western Region
2006 URCS for the MNA portion of the movement indexed to each quarter using
STB procedures The 2006 URCS use the 2005 cost of capital

2/ Used 1Q07 statistics and assumed all private cars

3/ See electronic worksheet "Shipment Payments 20060101 - 200706302q07 rates paid XLS, cell H235"

4/ Line d / Line c

Schematic of Current Route for Coal Movement from Powder River Basin, Wyoming to Montrose Power Station

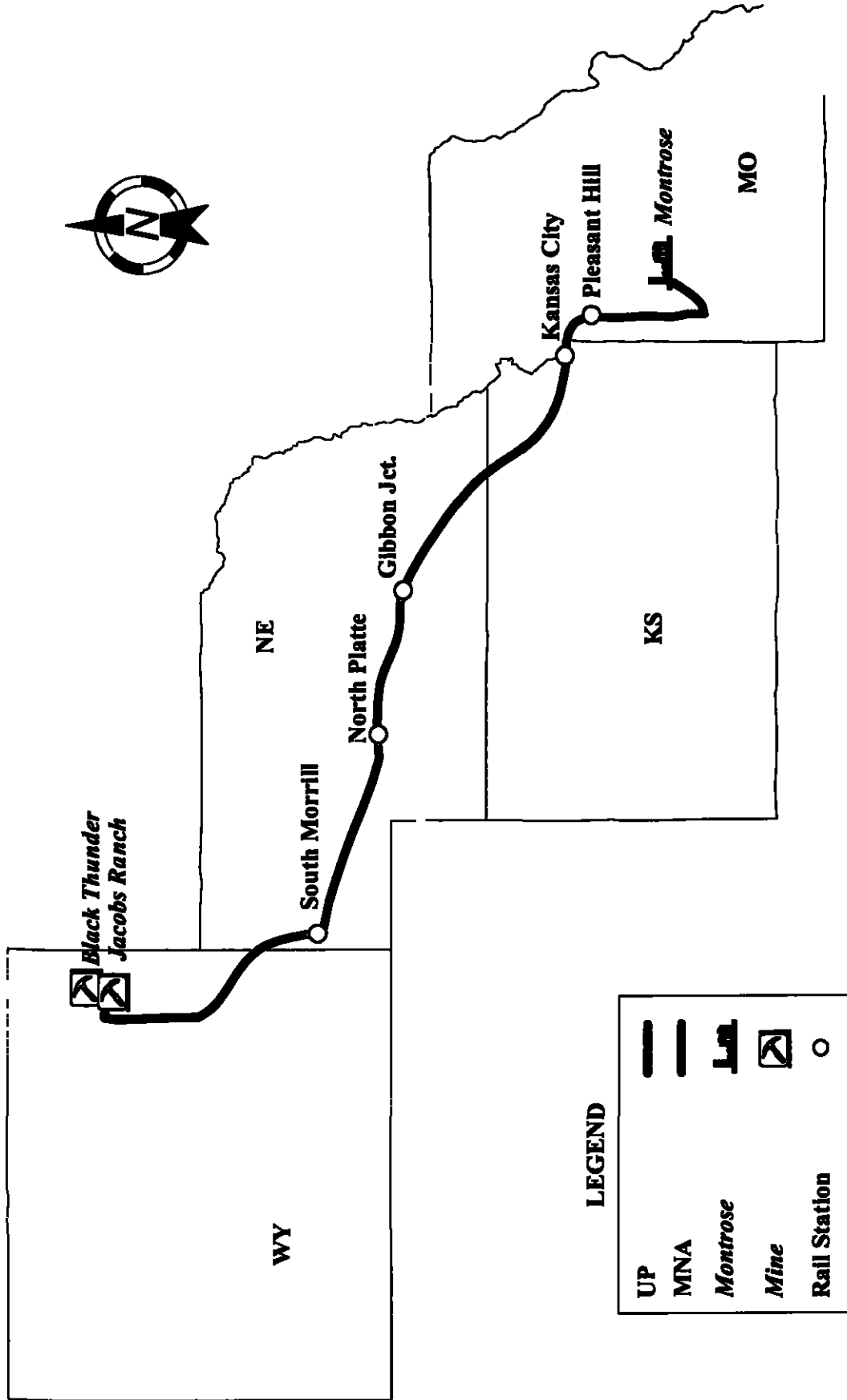


EXHIBIT II-A-4
REDACTED

425-30

LESSEE COUNTERPART

— ORIGINAL - DO NOT REMOVE —

CONFIDENTIAL

L E A S E A G R E E M E N T

BY AND BETWEEN

MISSOURI PACIFIC RAILROAD COMPANY

AND

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.

CONFIDENTIAL

CONFIDENTIAL

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 11th day of December, 1992, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("Lessor") and MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC., a Kansas corporation ("Lessee").

RECITALS:

A. Lessee intends to lease certain lines of railroad in the States of Arkansas, Missouri and Kansas from Lessor as follows: the Carthage Branch from milepost 643.13 near Pleasant Hill, MO, to milepost 415.0 at Bergman, AR, and from milepost 313.0 at Guion, AR, to milepost 259.05 near Diaz Junction, AR, a total distance of 282.08 miles; the Clinton Branch from milepost 262.6 near North Clinton, MO, to milepost 340.5 near Griffith, KS, a distance of 78.3 miles (there is a 1.4 mile equation between mileposts 272 and 273); the Webb City Branch from milepost 527.94 near Carthage, MO, to milepost 544.66 near Joplin, MO, a distance of 16.72 miles; the Atlas Branch from milepost 0.07 near Webb City, MO, to milepost 6.43 near Atlas, MO, a distance of 6.36 miles and the Wallis Spur from milepost 506.59 near Wallis, MO, to milepost 512.40 near Springfield, MO, a distance of 5.81 miles, including 0.11 miles of rights over Burlington Northern Railroad Company trackage as indicated below. By way of the assignment document referenced in Section 14.07, the Lessor also will assign to Lessee, Lessor's trackage rights over 0.11 miles of

Burlington Northern Railroad Company (hereinafter "BN")
trackage in Springfield, Missouri and over BN trackage
from chaining station 14187+07 near Aurora, MO, to
chaining station 10637+09+2354 feet near Springfield, MO,
as set forth in that separate agreement between Lessor
and BN dated July 8, 1970. The foregoing trackage shall
be referred to hereinafter as "Leased Premises".

B. The parties desire to enter into this Lease
Agreement to set forth the terms and conditions for the
use, management and operation of the Leased Premises
described above.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and
other good and valuable consideration, intending to be legally
bound, the parties do hereby agree as follows:

SECTION I
LEASED PREMISES

SECTION 1.01 -- Lessor does hereby lease to Lessee and Lessee
does hereby lease from Lessor the Leased Premises described in the
Recitals above and the property described in Section 1.02.

SECTION 1.02 -- The Leased Premises shall include, without
limitation, right-of-way, tracks, rails, ties, ballast, other track
materials, switches, crossings, bridges, culverts, buildings,
crossing warning devices and any and all improvements or fixtures
affixed to the right-of-way as indicated on Exhibit A hereto
attached, but excluding radio and microwave communications
structures and equipment and any and all items of personal property
not owned by Lessor or not affixed to the land, including, without

limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials and supplies. Within thirty (30) days after the Commencement Date (which is defined in Section 2.01), Lessor shall remove all its personal property from the Leased Premises. Items not so removed shall be deemed included in the Leased Premises. Lessee expressly acknowledges that Lessor has previously leased and/or licensed portions of the Leased Premises. This Lease is made subject to those leases and licensees. To the extent that there exists, on the Leased Premises, property owned by such prior lessees or licensees, that property may remain on the Leased Premises to the extent permitted by the terms of the lease or license under which it was placed on the Leased Premises.

SECTION 1.03 -- Lessee shall take the Leased Premises in an "AS IS, WHERE IS" condition and without any express or implied warranties, including but not limited to any warranties of merchantability and subject to: (a) reservations or exceptions of record of minerals or mineral rights, including but not limited to all coal, oil, gas, casinghead gasoline and minerals of any nature and character whatsoever underlying the Leased Premises together with the sole, exclusive and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to Lessor, (b) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes; (c) existing and future building zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (d) encroachments or

other conditions that may be revealed by a survey, title search or inspection of the property; (e) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created; (f) any liens of mortgage or deeds of trust encumbering said property; (g) the Lessor's exclusive right to grant any and all easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof, for the purpose of construction, installation, operation, use, maintenance, repair, replacement, relocation and reconstruction of any fiber optic facilities, signboards or coal slurry pipeline PROVIDED, HOWEVER, that the exercise of these rights shall not materially interfere with Lessee's railroad operations, and that the entry onto the Leased Premises by Lessor or an authorized third party in order to accomplish the foregoing purposes shall be upon prior written notice to Lessee, which notice shall include a reasonably detailed explanation of the acts to be taken or work to be performed; and (h) the right, interests, contracts, agreements, leases, licenses and easements (which are hereinafter referred to as "Lessor Agreements" or "Lessee Agreements" as defined in Sections 14.01 and 14.03) and any Supplemental Agreements or Amendments thereto which are or become effective on or prior to the Commencement Date hereof. The Lessee Agreements to be assigned to Lessee are identified in the attached Exhibit B.

SECTION 1.04 -- Lessor agrees that it will, so long as Lessee is not in default under the terms and provisions of this Lease, indemnify and hold Lessee harmless from and against any damages, losses and losses of reasonably anticipated net income from its

operation of the Leased Premises (discounted to present value) resulting from any foreclosure of any mortgage on any segment of the Leased Premises or resulting from any actions by any mortgage holder which adversely affects Lessee's use and operation of any segment(s) of the Leased Premises.

SECTION II
LEASE TERM

SECTION 2.01 -- Unless this Agreement is terminated earlier in accordance with Section XV, Lessee shall have and hold the Leased Premises unto itself, its successors and assigns, for a term of twenty (20) years beginning on the Commencement Date. The Commencement Date shall be five (5) days after Lessor has notified Lessee in writing that Lessor has satisfactory evidence of compliance with the conditions precedent provided in Section V unless such notice period is waived by mutual agreement.

SECTION 2.02 -- Subject to Lessor's possible reacquisition of the Leased Premises pursuant to this Agreement, Lessee shall have the right to extend the term of this Lease three (3) times for an extended term of up to twenty (20) years for each extension. Lessee shall notify Lessor of any election to extend the term hereof by giving Lessor not more than 12 months, but not less than 6 months' written notice prior to the expiration of the then current lease term.

SECTION 2.03 -- If, subject to the right of Lessor to evict or remove Lessee from the Leased Premises by all available legal means, Lessee holds over and remains in possession of the Leased Premises following expiration of the then current term, original or extended, or following an early termination of this Lease pursuant

to Section XV, such holding over will create a month-to-month tenancy only. During any such hold over period, Lessee agrees to pay to Lessor as rent, a sum equal to one-twelfth (1/12th) of the Annual Rental, as adjusted pursuant to Section 4.04, required pursuant to the first sentence of Section 4.01 without, however, any reduction pursuant to the schedule set forth in Section 4.03. Such monthly payments shall be due each month on the same day of the month as the Anniversary Date of this Lease. Any profits or losses from Lessee's operations during any holdover period shall enure and accrue to the Lessee.

SECTION III **RAIL SERVICE**

SECTION 3.01 -- Beginning on the Commencement Date and throughout the term of this Lease, Lessee shall be entitled to full and exclusive use of the Leased Premises for the operation of common carrier rail freight service, including the right to access and interchange traffic directly with all present and future railroads at Springfield, Joplin, Carthage, Lamar, Aurora and Nevada, MO and Ft. Scott, KS. During the term hereof, Lessor shall not have the right to operate trains over the Leased Premises, except that Lessor may obtain trackage rights between Diaz Junction and Independence, AR, after giving seven days' written notice to Lessee to serve, on an exclusive basis, the Arkansas Power and Light Company (AP&L) plant located at Independence, AR, either at AP&L's request or at Lessor's sole discretion. Lessor would pay Lessee \$60,000 per year for these rights if they are obtained. Lessor shall not grant trackage rights to any third party. Except for the Southeast Kansas Railroad operation between Nassau Junction

and Nevada, MO, Lessor further warrants that as of the date of this Lease, there is no other freight rail carrier to which Lessor has granted rights to use the Leased Premises other than pursuant to joint facility agreements or arrangements that are superior to those granted herein to Lessee. During the term hereof, Lessee shall not grant to any third party the right to operate over the Leased Premises, nor shall it enter into any commercial or other agreement to move the traffic of any third party over the Leased Premises without the prior written consent of Lessor. During the term hereof, Lessee shall not use the Leased Premises for any purpose other than for rail freight service, or with prior consent of Lessor, rail passenger service.

SECTION 3.02 -- During the term of this Lease, Lessee will not suspend or discontinue its operation as a common carrier by rail over all or any part of the Leased Premises without first applying for and obtaining from the ICC, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; PROVIDED, HOWEVER, that Lessee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving Lessor sixty (60) days' notice of Lessee's intent to do so.

SECTION 3.03 -- Upon suspension or discontinuance of Lessee's operations as a rail carrier of freight over all or any part of the Leased Premises during the term or any extended term hereof, for reasons other than events of force majeure or a lawful embargo,

whether or not pursuant to necessary and proper regulatory authority as required by Section 3.02 of this Section III, Lessee will promptly relinquish to Lessor possession of the Leased Premises and this Lease Agreement will terminate as provided by Section XV of this Lease; PROVIDED, HOWEVER, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises generally will be permitted and will not result in a termination of this Lease or require relinquishment of possession of the Leased Premises by Lessee.

SECTION 3.04 -- Lessor may acquire the right to operate over the Leased Premises between milepost 259.05 at Diaz Junction and milepost 270.00 near Independence to serve AP&L and, if this right is exercised, Lessee shall no longer have the right to serve AP&L, and AP&L shall become a closed industry served only by Lessor. This right shall be acquired effective seven days after Lessee's receipt of Lessor's written notice to Lessee that Lessor desires to begin operation over such trackage.

SECTION IV RENT

SECTION 4.01 -- In consideration of this Lease, and subject to the terms and provisions set forth herein, Lessee agrees to pay Lessor rent for the Leased Premises in the amount of Ninety Million Dollars (\$90,000,000) per year payable annually in advance on the 1st day of March; PROVIDED, HOWEVER, that subject to the provisions of Section 4.02 hereof, for each lease year that 95% or more of all traffic originating or terminating on the Leased Premises is interchanged with Union Pacific Railroad Company or Missouri

Pacific Railroad Company and any affiliated company, their successors and assigns, Lessor agrees that it will waive or partially waive the rent for that particular year in accordance with the schedule set forth in Section 4.03. The 95% level must be achieved separately and simultaneously on the Pleasant Hill-Bergman (including connecting branches) and Guion-Diaz Junction segments.

SECTION 4.02 -- The following traffic shall not be counted in calculating either total traffic or the percentage of traffic in Section 4.03: (a) Industries open to reciprocal switching at Ft. Scott, KS; Lamar, MO; Joplin, MO; Carthage, MO; Aurora, MO; and Springfield, MO as shown in Exhibit C, and (b) traffic that is local to Lessee, i.e., traffic which both originates and terminates at stations on the Leased Premises or at the stations served by Lessee pursuant to the Line Sale Contract between Lessor and Lessee which is being executed by the parties concurrently with this Agreement, and not involving line haul movement by any railroad other than Lessee. Lessor will consider further exceptions to this section on a case by case basis.

SECTION 4.03 -- Upon request of Lessor, on or before the 1st day of February of each year following the commencement of this Lease, Lessee shall submit a report, signed by an officer of Lessee, certifying the amount and type of traffic originating or terminating on the Leased Premises during the prior calendar year, the railroads (if any) with which all or portions of such traffic were interchanged, the volume of traffic interchanged with each such railroad, and the total amount of rent due and payable for the previous calendar year. The rent due from Lessee for the Year shall be determined by reference to the percentage of the total

traffic (as described in Section 4.01, subject to the provisions of Section 4.02) that was interchanged with Lessor, subject to the terms of Section 4.04, in accordance with the following schedule:

**PERCENTAGE OF THE TOTAL
TRAFFIC THAT WAS INTER-
CHANGED WITH LESSOR**

RENT DUE LESSOR

100 - 95%	\$ -0-
94 - 85%	\$10,000,000
84 - 75%	\$20,000,000
74 - 65%	\$20,000,000
64 - 55%	\$30,000,000
54 - 45%	\$40,000,000
44 - 35%	\$50,000,000
34 - 25%	\$60,000,000
24 - 15%	\$70,000,000
14 - 5%	\$80,000,000
0 - 4%	\$90,000,000

Lessee shall pay to Lessor all rent determined to be payable pursuant to this Section 4.03 on or before March 1st for each calendar year following the commencement of this Lease.

SECTION 4.04 -- Rent shall be adjusted each year to reflect changes in the Producer Price Index - Finished Goods (the "Index") and the amount due each year shall be determined as follows:

The Index for the month of December 1992 shall be deemed to be the base index ("Base Index"). Rent shall be adjusted annually as of each December thereafter by multiplying the rent shown in Section 4.03 by a fraction, the denominator of which is the Base Index and the numerator is the Index for the month of December in each year. The term "Producers Price Index" shall mean the Producer Price Index - Finished Goods (Reference Base 1982 - 100), published by the United States Department of Labor, Bureau of Labor Statistics, or, if the Producer Price Index ceases to be published, such comparable index or measure of change in the

purchasing power of the dollar as may then be in common usage of adjustments in rents. Adjustments so made each December shall be effective for the following calendar year.

SECTION 4.05 -- Lessee shall pay all due rent payments, and all other payments required by this Lease, to Lessor at 1416 Dodge Street, Omaha, Nebraska 68179, Attn: Senior Director of Interline Marketing, or at such other location or to such other individual as may be designated by Lessor in writing .

SECTION 4.06 -- If Lessee fails to pay any installment of rent when due, and such failure continues for thirty (30) days, Lessee shall pay interest at the rate of 2% over the prime rate of CHASE MANHATTAN BANK, N.A., its successors and assigns, in effect on the day the rent was due, which interest shall accrue from the date it was due until the date of payment. No such failure to pay any installment will accrue any interest or constitute an Event of Default in the event it is determined that no rent was, in fact, payable by reason of the provisions of Section 4.03.

SECTION 4.07 -- Acceptance by Lessor, its successors, assigns or designees of rent or other payments shall not be deemed to constitute a waiver of any other provision of this Lease.

SECTION 4.08 -- Upon receipt by Lessor of the report required by Section 4.03, Lessor shall, upon giving at least fifteen (15) days' written notice, have the right, at its sole cost and expense, to review and audit all of Lessee's records relating to or forming the basis for such report.

SECTION 4.09 -- As additional security for the payment by Lessee to Lessor of any sums of money required hereunder to be paid by Lessee, it is agreed that in the event Lessee fails, neglects or

refuses to timely pay any sums due and owing to Lessor hereunder, Lessor may use any and all sums which it may collect from any third party and which may, in whole or in part, be payable to Lessee, as an offset against any and all payments for which Lessee is delinquent. In addition, any sums at any time due and payable to Lessee by Lessor may also be used by Lessor and credited to Lessor's account to the extent of any delinquent payment owed by Lessee to Lessor. Lessee does hereby waive any and all claims, demands and causes of action against Lessor which it may have or claim to have as a result of Lessor's use or implementation of the provisions of this Section 4.09 and/or any offset.

SECTION V
CONDITIONS PRECEDENT

As conditions precedent to either party's obligations hereunder:

SECTION 5.01 -- Lessor and Lessee shall have received Board of Directors' approval for this transaction.

SECTION 5.02 -- There shall not be a work stoppage imminent or in effect on the lines of Lessor or any of its affiliated companies as a result of the execution and/or implementation of this Lease.

SECTION 5.03 -- Lessee shall have acquired the right to conduct rail freight service over the Leased Premises from the Interstate Commerce Commission, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

SECTION 5.04 -- Lessor and Lessee shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

SECTION 5.05 -- Lessor and Lessee shall execute trackage rights agreements between Kansas City (Neff Yard) and Pleasant Hill, MO and between Diaz Junction and Newport, AR (Lessee over Lessor's tracks) solely for the purpose of interchange with Lessor.

SECTION 5.06 -- Lessee shall not have discovered any contract, agreement, award, judgment, title defect or condition which would prevent Lessee from operating a rail freight operation on the Leased Premises in substantially the same manner as presently conducted by Lessor. Upon execution hereof, Lessor shall make available for Lessee's inspection and review all contracts, deeds, agreements and documents pertaining to or affecting the Leased Premises. Lessee shall notify Lessor in writing within forty-five (45) days from date of execution hereof whether or not its review of Lessor's records and the Leased Premises has satisfied this condition precedent.

SECTION 5.07 -- Lessee and Lessor are agreeable to any conditions which might be imposed by the Interstate Commerce Commission or other regulatory body as part of the authority required to consummate this transaction.

SECTION VI
MAINTENANCE

SECTION 6.01 -- During the term hereof, Lessee shall maintain the Carthage Subdivision main track of the Leased Premises between mileposts 643.13 and 259.05 to Class 3 standards, as defined by the Federal Railroad Administration and capable of operating speeds of

at least 40 miles an hour, with the speed restrictions in effect as of the date of the Lease as shown in Exhibit D. All other leased track shall be maintained to the class necessary to maintain speeds as shown in Exhibit D at Lessee's own cost and expense and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon. Lessor shall have no obligation under the terms of this Lease to perform any maintenance upon, or furnish any materials for the maintenance of the Leased Premises during the term hereof. Lessee shall comply with all applicable federal, state or local laws, ordinances and regulations and shall protect the Leased Premises against all encroachments or unauthorized uses. Lessee shall not apply for any Federal or State funding for rehabilitation or maintenance of the Leased Premises unless Lessor provides written consent to such application.

SECTION 6.02 -- Lessor shall have the right to inspect the Leased Premises at all reasonable times. Lessor shall notify Lessee in writing of any deficiencies in Lessee's maintenance program and Lessee shall, within ninety (90) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence. Lessee may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority and after ten (10) days' written notice to Lessor. Any rehabilitation or reconstruction, including but not limited to that necessitated by an Act of God, will be the sole responsibility of Lessee. Such maintenance will include any function which Lessor, but for this

Lease, would be required to perform pursuant to applicable federal, state, and municipal laws, ordinances, and regulations.

SECTION 6.03 -- Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided, but Lessee shall not be required hereunder to do so.

SECTION 6.04 -- Lessee's maintenance obligations hereunder shall include, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures, and sub-roadbed. Lessee agrees that all grade crossings and grade crossing protection devices will be given a high priority in Lessee's maintenance program.

SECTION 6.05 -- Without the prior written consent of Lessor, Lessee will not replace existing track and other track materials ("OTM") on the Leased Premises with substitute or replacement track or OTM having a lighter weight, of lesser quality, or having a lower fair market value. Such requirement shall also apply to all other facilities leased hereunder. Any repair or replacement of welded rail shall also be welded. Lessee may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, without the prior written consent of the Lessor, provided that the work being performed by the Lessee and the materials being provided by the Lessee are sufficient to maintain the trackage to the standards set forth in Section 6.01.

SECTION 6.06 -- Subject to Section XII, Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Lessee

during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens, or demands whatsoever.

SECTION VII
ACCOUNTING AND REPORTING

SECTION 7.01 -- Lessee agrees to furnish to Lessor such copies of reports pertaining to Lessee and the Leased Premises prepared in the normal course of Lessee's business as Lessor may reasonably request and Lessee may lawfully furnish. Upon request, Lessee will deliver to Lessor copies of all financial statements showing the financial condition of Lessee which are furnished by Lessee to the Interstate Commerce Commission ("ICC"), FRA (pursuant to any agreement between FRA and Lessee relating to financial assistance), the Securities & Exchange Commission ("SEC") or stockholders. All such financial statements will be furnished to Lessor at the same time as they are furnished to other parties.

SECTION 7.02 -- Irrespective of any obligations of Lessee to furnish financial statements to others, Lessee shall furnish Lessor financial statements prepared in accordance with generally accepted accounting principles (which need not be in addition to those furnished to others as aforesaid) fairly presenting the financial position and results of operation of Lessee as and at the end of each fiscal year. Such statements shall be furnished to Lessor within ninety (90) days following the end of each fiscal year.

SECTION VIII
MODIFICATIONS AND IMPROVEMENTS

SECTION 8.01 -- In connection with its use of the Leased Premises, Lessee shall have the right to remove, replace, add to or relay elements of the Leased Premises in the interest of cost or operating efficiency, provided that a continuous and usable line of railroad between the termini in effect on the Commencement Date is maintained. Lessee shall have the right to apply the net proceeds from salvaged materials to maintenance or improvement of the Leased Premises; provided that any such net proceeds not reinvested in the Leased Premises shall be paid to Lessor. Improvements to the Leased Premises, whether normal maintenance or otherwise, will be treated as capital expenditures or operating expenses under the then current rules of the ICC; and, except as provided in Section 8.03, such improvements shall become part of the Leased Premises and, at the termination of this Lease, shall be the property of Lessor unless Lessor has determined that Lessee may retain ownership as provided in Section 8.03.

SECTION 8.02 -- The provisions of Section 8.01 shall also apply and govern any work or maintenance done by Lessee pursuant to Section VI. On or before February 1st of each calendar year, Lessee shall provide Lessor with a written summary of all salvage or other materials removed from the Leased Premises, the proceeds received therefor and the manner in which the proceeds were reinvested. Failure to either reinvest such proceeds or pay any unreinvested proceeds to Lessor within six months following such reporting date shall, at Lessor's sole discretion, constitute a Default hereunder.

SECTION 8.03 -- Prior to making any improvement of the Leased Premises to which it desires to retain ownership, Lessee shall notify Lessor of its intent to make such improvement, and its desire to retain ownership thereof. If Lessor determines that an improvement may be removed or severed from the Leased Premises upon termination of this Lease without diminishing Lessor's investment in the Leased Premises and without interfering with the utilization of the Leased Premises as part of an interstate rail system, Lessor will notify Lessee that such improvement shall be Lessee's sole property and may be removed by Lessee upon termination of this Lease subject to Section XV of this Lease. Regardless of eventual ownership, Lessee shall notify Lessor prior to making any substantial improvement or modification of the Leased Premises costing in excess of \$25,000.

SECTION 8.04 -- Lessee may from time to time establish, relocate or remove sidetracks or industrial spur tracks on the Leased Premises after Lessee obtains any necessary regulatory authority. Lessor shall have no obligation to bear any cost of materials, construction or maintenance of said industrial spur tracks. That portion of any such spur track which is located upon the Leased Premises shall become part of the Leased Premises and, upon termination of this Lease, the property of Lessor. Any industry track agreement executed by Lessee shall first be submitted to Lessor for written approval, which shall not unreasonably be withheld. All industry track agreements, regardless of duration, shall contain provisions indemnifying Lessor and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

SECTION IX
REPRESENTATIONS AND WARRANTIES

SECTION 9.01 -- Lessor represents and warrants that:

- (a) It has full statutory power and authority to enter into this Lease and to carry out the obligations of Lessor hereunder.**
- (b) Its execution of and performance under this Lease do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.**

SECTION 9.02 -- Lessee represents and warrants that:

- (a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Kansas and is qualified to do business in the States of Arkansas, Missouri and Kansas.**
- (b) It has full power and authority to enter into this Lease, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.**
- (c) Upon expiration of the original or any extended term of this Lease or upon termination hereof by Lessor pursuant to Section XV, Lessee will bear any and all costs of protection of its current or future employees, including former employees of Lessor that may be employed by Lessee, arising from any labor protective conditions imposed by the ICC, any other regulatory agency or statute as a result of Lessee's lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder. Nothing in this Lease shall be construed as an**

assumption by Lessee of any obligations to Lessor's current or former employees under collective bargaining or other agreements that may exist or have existed between Lessor and its employees, or any of them.

SECTION X
OBLIGATIONS OF THE PARTIES

SECTION 10.01 -- During the term hereof, Lessee will pay all bills for water, sewer, gas and electric service to the Leased Premises. If Lessor is required to, or does pay, any such bills, Lessee will promptly reimburse Lessor upon receipt of a bill or bills therefor. If the Leased Premises are not billed separately but as a part of a larger tract or parcel, Lessee shall pay that portion of such bills as is attributable to usage on or in connection with the Leased Premises.

SECTION 10.02 -- During the term of the Lease, Lessee will comply with all applicable federal, state and municipal laws, ordinances, and regulations.

SECTION 10.03 -- During the term of the Lease, Lessee will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. Except to the extent that such activities are the responsibility of the Lessor under Section 10.04, Lessee at its own expense will make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial

action which may be required under any such laws, rules, regulations, ordinances, or judgments. During the term of this Lease, Lessee will not dispose of any wastes of any kind, whether hazardous or not, on the Leased Premises.

SECTION 10.04 -- Lessee assumes the risk of and agrees to indemnify and hold Lessor harmless, and to defend Lessor against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source for any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be conveyed hereunder; for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee, or any third party), or property damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in Lessee's care, custody, or control, and third party property), where such contamination, Environmental Problems, injury or damage arise out of acts, omissions or events occurring on the Leased Premises after the Commencement Date. Lessor assumes the risk of and agrees to indemnify and hold Lessee harmless, and to defend Lessee against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source for any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattel property to be conveyed hereunder, for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee or any third party) or property

damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in its or their care, custody or control, and third party property) where such contamination, Environmental Problems, injury or damage arise out of acts, omissions or events occurring on the Leased Premises prior to the Commencement Date, provided, however, Lessee has the burden of proving such contamination, Environmental Problems, injury or damage arose out of such pre-Commencement Date acts, omission or events.

"Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatever nature which arise from environmental damage, contamination, toxic wastes or similar causes.

If Lessor's indemnification of Lessee for such contamination or Environmental Problems becomes effective, Lessor has the right to assume sole control of and/or implement any order, demand, plan or request, or defend against any cause of action of whatever nature using legal and technical counsel of its choosing.

SECTION 10.05 -- Lessee will promptly furnish Lessor written notice of any and all (i) releases of hazardous wastes or substances of which it becomes aware which occur during the term of this Lease whenever such releases are required to be reported to any federal, state, or local authority, and (ii) alleged water or air permit condition violations, and (iii) any notification received by Lessee alleging any violation of any state, federal or

local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or hazardous material, handling transportation or storage. To the extent practicable, such written notice will identify the substance releases, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation, and will certify that Lessee has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by which such compliance is expected. Lessee will also provide Lessor with copies of any and all reports made to any governmental agency which relate to such releases or such alleged violations during the term of this Lease.

SECTION 10.06 -- During the term of this Lease, Lessor will have the right to enter the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Lease. If Lessor detects any violation, including any contamination of the Leased Premises which it deems to be the responsibility of Lessee under this Section X, Lessor will notify Lessee of the violation. Upon receipt of such notice Lessee will take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should Lessee inadequately remedy or fail to eliminate the violation, Lessor or its representative will have the right, but not the obligation, to enter the Leased Premises and to take

whatever corrective action Lessor deems necessary to eliminate the violation, at the sole expense of Lessee.

SECTION 10.07 -- Regardless of any acquiescence by Lessor, Lessee will (i) indemnify and hold harmless Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns from all liability, costs, expenses, fines, or penalties resulting from any violation of any federal, state, or local law, rule, regulation, or ordinance controlling air, water, noise, hazardous waste, solid waste, or other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, wastes, or other pollutants arising out of Lessee's operation of the Leased Premises and from any violations of this Section X, (ii) reimburse Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns for all costs and expenses incurred by Lessor or its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns in eliminating or remedying such violations, pollution, or contamination, and (iii) reimburse and hold harmless Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns from any and all costs, expenses, attorneys' fees, and penalties, fines, or civil judgments sought or obtained against Lessor or its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns as a result of Lessee's lease and operation of the Leased Premises or any release or disposal of any hazardous material, substance, waste, or other pollutant onto or into the ground or into the water

or air from or upon the Leased Premises during the term of this Lease; PROVIDED, HOWEVER, that Lessee shall have no obligation or liability where such release or disposal is attributable to acts or omissions of Lessor, its agents, employees or third parties acting under Lessor's authority.

Lessee waives and will not assert as a defense against Lessor any statute of limitations applicable to any controversy or dispute arising under this Section X, and Lessee will not raise or plead a statute of limitations defense against Lessor or its lessors in any action arising out of Lessee's failure to comply with this Section X.

SECTION XI **EMINENT DOMAIN**

SECTION 11.01 -- In the event that at any time during the term of this Lease the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

SECTION 11.02 -- If such proceeding shall result in the taking of the whole or a portion of the Leased Premises which materially interferes with Lessee's use of the Leased Premises for railroad purposes, Lessee shall have the right, upon written notice to Lessor, to terminate this Lease in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease shall be adjusted as of the date of such vesting.

SECTION 11.03 -- If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with Lessee's use of the Leased Premises for railroad purposes, then the Lease shall continue for the balance of its term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by the Lessee under the provisions of this Lease.

SECTION 11.04 -- Except as otherwise expressly provided in this Section, Lessor shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

SECTION 11.05 -- Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Leased Premises. Each party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other party, its attorneys, and experts. Lessee and Lessor shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure Lessee's continued ability to use the Leased Premises for the conduct of freight railroad operations.

SECTION XII
INSURANCE AND INDEMNIFICATION

SECTION 12.01 -- Except where the sole proximate cause of an injury, death, loss or damage is the negligence of Lessor, its agents or employees, Lessee shall protect, defend, hold harmless

and indemnify Lessor from and against any and all liability, expense, cost, claim or suit, including attorney's fees, incurred by or assessed against Lessor, its agents, servants, affiliated companies and its successors and assigns on account of injuries, death, or property loss or damage arising from Lessee's use, operation or maintenance of the Leased Premises, it also being the intent of the parties that Lessee shall indemnify Lessor for any negligence on Lessor's part which may contribute to any such injury, death, loss or damage; PROVIDED, HOWEVER, that all liability, including liability for any injury, death, loss, or damages arising in connection with toxic waste or environmental conditions shall be governed by the provisions of Section 10.04 hereof.

SECTION 12.02 -- Notwithstanding the provisions of Section 12.01, Lessee will be absolutely responsible for and will indemnify, defend and save harmless Lessor and its officers, agents, employees, affiliates, successors, and assigns from all liability, claims, penalties, fines, expenses, damages, and costs, including attorney's fees, arising from Lessee's violation of or from its failure to comply with any provisions of this Lease, regardless of whether contributed to by any negligence of Lessor or its officers, agents, employees, or affiliates, but not if due solely to the gross negligence of Lessor, its officers, agents, employees or affiliates.

SECTION 12.03 -- Lessee shall, at its own sole cost and expense, procure the following kinds of insurance for the term of this agreement commencing as of the date of Closing and promptly pay when due all premiums for that insurance. Upon the failure of

Lessee to maintain insurance as provided herein, Lessor shall have the right, after giving Lessee ten days written notice, to obtain such insurance and Lessee shall promptly reimburse Lessor for that expense. The following minimum insurance coverage shall be kept in force during the term of this Agreement:

Comprehensive Railroad Liability Insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$10,000,000 each occurrence or claim and a general aggregate limit of at least \$10,000,000. This insurance shall contain Broad Form Contractual Liability covering the indemnity provisions contained in this Lease (ISO Form GL 24 14 or equivalent), severability of interests and name Lessor as an additional insured with respect to all liabilities arising out of Lessee's obligation to Lessor in the Lease. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Lease be canceled unless replaced with a policy containing the same Retro Anniversary Date as the policy being replaced.

SECTION 12.04 -- Lessee warrants that this Lease has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name Lessor as additional insured with respect to all liabilities arising out of Lessee's obligation to Lessor.

SECTION 12.05 -- Lessee shall furnish to Lessor certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 12.06 -- The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class X or better. Such insurance company shall be authorized to transact business in the States of Arkansas, Missouri and Kansas.

SECTION 12.07 -- Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve Lessee from liability hereunder in excess of such coverage, nor shall it preclude Lessee from taking such other action as is available to it under any other provision of this Agreement or otherwise in law.

SECTION 12.08 -- The limits of liability required under Section 12.03 shall be increased every five (5) years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index, in the same manner as rent adjustments are calculated pursuant to Section 4.04.

**SECTION XIII
TAXES**

SECTION 13.01 -- It is understood and agreed that Lessee shall pay all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease Term. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

SECTION 13.02 -- Lessee shall be liable for and pay all special assessments and/or taxes levied against the Leased Premises

as may be imposed by any taxing jurisdiction having authority in the premises.

SECTION 13.03 -- Real property ad valorem taxes, fees and special assessments, if any, shall be prorated between Lessor and Lessee as of January 1, 1993. Lessee shall be responsible for paying any and all such taxes, fees or assessments accruing after January 1, 1993.

SECTION XIV
EASEMENTS, LEASES AND LICENSES

SECTION 14.01 -- Lessor covenants and agrees to pay to the Lessee a portion of the revenues collected by Lessor from use of the Leased Premises pursuant to any easement, lease (excluding leases of trackage) or license (excluding licenses of trackage) affecting the use of the Leased Premises (hereinafter referred to as "Lessor Agreements"). The payment to be paid by Lessor in connection with this provision will be fifty percent (50%) of all amounts billed (as adjusted for the difference between billings and collections for prior periods) by Lessor pursuant to Lessor Agreements payable semi-annually in arrears on January 31 and July 31 of each year. Lessee shall not receive any amounts paid to Lessor for preparation fees and for services performed by Lessor pursuant to Section 14.03. At its discretion, Lessor may enter into new Lessor Agreements applicable to the Leased Premises without Lessee's consent. Lessee shall notify Lessor of any attempt to locate new customers on the Leased Premises, including the location of the possible new customers. If Lessor desires to lease the same portion of the Leased Premises, Lessor shall provide to Lessee thirty (30) days' advance notice of that intent.

Nothing in this Lease shall prevent Lessor from selling any portion or portions of the Leased Premises which is or are located beyond 50 feet of the centerline of any branch or main line track, including areas of any station ground provided such areas are not being used in connection with Lessee's rail freight operations. All proceeds from such real estate sales shall accrue solely to Lessor and Lessee shall either execute an amendment to this Lease which deletes any such sale property from the description and terms hereof, or shall execute any other document reasonably necessary to remove the encumbrance of this Lease from such property.

SECTION 14.02 - The revenues collected by Lessor described in Section 14.01 shall not be prorated as of the Commencement Date. Lessor shall be entitled to receive and retain all payments due and payable prior to the Commencement Date whether payable in advance or in arrears. If Lessee is not in default under this Agreement, Lessee will receive revenues due and payable prior to termination hereof.

SECTION 14.03 - From and after the Commencement Date, Lessor will manage all Lessor Agreements. From and after the Commencement Date, Lessee will manage all agreements, other than Lessor Agreements, applicable to the Leased Premises (hereinafter referred as "Lessee Agreements"). Lessee shall document all of such Lessee Agreements using standardized forms prepared and approved by Lessor in accordance with Lessor's policies concerning hazardous materials storage and handling and engineering standards. Lessee shall not execute or deliver any Lessee Agreement, including any renewal, termination or cancellation thereof, which deviates from Lessor's

standard forms, engineering standards or operating instructions without first receiving the written concurrence of Lessor. Lessor's concurrence or non-concurrence (as the case may be) shall be delivered to Lessee within thirty (30) days of Lessee's written request therefore.

All preparation fees and all expenses billed by Lessor applicable to the Lessor Agreements shall be retained by Lessor. All preparation fees and expenses billed by Lessee applicable to the Lessee Agreements shall be retained by Lessee.

SECTION 14.04 - Lessee shall not execute any Lessee Agreements affecting the Leased Premises having a term extending beyond the initial term of this Lease (or beyond any given extended term which may be in effect at the time of execution) without securing Lessor's express written consent.

Cancellation of any Lessee Agreement for any reason during the term of this Lease must be approved, in advance and in writing, by Lessor. This approval or non-approval (as the case may be) shall be forwarded to Lessee within thirty (30) days of Lessee's request therefore.

SECTION 14.05 - Lessee shall carefully supervise the use of the Leased Premises by any third party to ensure that the value of the Leased Premises is not diminished by reason of such use. In particular, Lessee shall ensure that (i) all uses of the Leased Premises are pursuant to appropriate documentation and that all unauthorized use is either covered by agreement or promptly removed from the Leased Premises; (ii) no use is permitted which could jeopardize the value of the Leased Premises and that Lessee Agreements for storage or handling of hazardous materials are

strictly in conformity with Lessor's policies; and (iii) upon the termination of any Lessee Agreement for any reason whatsoever, the Leased Premises are cleared and restored as required by the terms of the Lessee Agreements. In addition, if the unauthorized use is of a type which would be covered by a Lessor Agreement, Lessee shall promptly bring the unauthorized use to Lessor's attention.

SECTION 14.06 - Lessor reserves the exclusive right to grant easements or other occupations by coal slurry pipelines, or fiber optic or other communication systems or signboards. Any requests for such permits or easements shall be referred to Lessor for appropriate action. Lessor will give at least thirty (30) days notice to Lessee prior to initiation of any easements or other occupations pursuant to this Section. Revenues from the granting by Lessor of these agreements shall accrue solely to Lessor.

SECTION 14.07 - As soon as reasonably practicable after the Commencement Date, Lessor shall assign to Lessee all Lessee Agreements affecting the Leased Premises and Lessee shall assume Lessor's duties and obligations thereunder.

SECTION XV TERMINATION

SECTION 15.01 -- This Lease may be terminated as follows:

(a) By Lessee or Lessor:

1. on or at any time prior to the Commencement Date if any substantive condition unacceptable to Lessee or to Lessor is imposed in the regulatory approvals or exemptions contemplated by Section V of this Lease for Lessee's lease and operation of the Leased Premises;

2. upon the occurrence of an Event of Default as provided in Section XIX;
3. upon thirty (30) days' notice to Lessee, as a consequence of an uninterrupted abandonment or discontinuance of operations, as the case may be, for six (6) months by Lessee over any line segment of the Leased Premises (other than an inconsequential abandonment or discontinuance not affecting rail service generally over the Line) other than by reason of an event of force majeure, a lawful embargo, or changes in the demand for service; or
4. upon thirty (30) days' notice to Lessor, following Lessee's obtaining all necessary regulatory approvals or exemptions to permit Lessee to abandon or discontinue rail operations;

(b) By Lessor if Lessee fails to provide a core service of six (6) days per week to customers located between and including Diaz Junction and Guion, Arkansas, PROVIDED, HOWEVER, that Lessee shall have this obligation only if (i) volume on the Diaz Junction-Guion line (excluding unit coal trains) in any three (3) month period is at least eighty percent (80%) of the 1991 volume divided by 4 and (ii) such core service of six (6) days per week was requested by any customer located adjacent to the Diaz Junction-Guion line and Lessee failed to provide such service.

Lessee's failure to maintain six (6) day per week service on the Diaz Junction-Guion portion of the Leased Premises will subject Lessee to being placed on probationary status by Lessor

pursuant to written notice from Lessor, for a period of two (2) months commencing no earlier than two (2) weeks after the date of the notice from Lessor. If Lessee fails to both restore six (6) day per week service by the time of commencement of the probationary period and maintain such service throughout the probationary period, Lessor, at its option, may terminate Lessee's lease of the Diaz Junction-Guion portion of the Leased Premises effective on or after three (3) months' written notice to Lessee and Lessor then may again begin operation over the Diaz Junction-Guion portion of the Leased Premises. Lessee agrees to permit Lessor's immediate operation over the Diaz Junction-Guion portion of the Leased Premises at no charge to Lessor to permit Lessor's service to customers during the period between the date of Lessor's written notice of termination of the Lease and the date of Lessor's actual repossession of the Diaz Junction-Guion portion of the Leased Premises. Lessor shall not exercise its rights hereunder if Lessor agrees with Lessee that Lessee's failure to provide six (6) day per week service was due to a bona fide force majeure condition resulting from Acts of God, war, insurrection or any like cause beyond Lessee's control. The provisions of this Section shall not apply to Lessee's operation over Lessor's Pfeiffer Spur, and Lessee shall not be required to provide six (6) day per week service over the Pfeiffer Spur.

(c) By Lessor pursuant to Section XIX.

(d) By Lessee in the event Lessor is no longer able to interchange traffic with the Lessee at Kansas City, MO or Newport, AR, or at an alternate location satisfactory to both Lessee and Lessor.

(e) In the event that within 365 days after Commencement Date (i) any of Lessor's labor organizations cause a work stoppage as a result of this Lease and Lessor is unable to negotiate a satisfactory resolution with the organization or (ii) conditions unacceptable to Lessor are imposed by the Interstate Commerce Commission or a court or other body, Lessor shall have the right, anytime within such 365 day period, to terminate this Lease by giving thirty (30) days' written notice to Lessee. In such event Lessee shall deliver possession of the Leased Premises to Lessor on such 30th day, subject to all necessary prior regulatory approvals or exemptions, and Lessee shall comply with the provisions of Section XV within such thirty (30) day period. In the event Lessor exercises this right of termination, it will pay Lessee a sum equal to the total of the Verified Costs incurred by Lessee in commencement of operations on the Line, subject to a maximum of \$250,000. "Verified Costs" shall mean costs incurred in purchases of tangibles such as, but not limited to, capital improvements, computers and office and real property, title to which shall pass to Lessor in the event of a termination as provided for hereunder. Thereafter, Lessor will give Lessee the right of first refusal to lease the Leased Premises, exercisable within one year following Lessor's notice to Lessee, on the same terms as set forth in this Lease, provided the conditions which caused termination pursuant to this Section 15.01(d) have, in Lessor's sole opinion, been remedied.

(f) By Lessor or Lessee, by giving 30 days' written notice to the other party, in the event a court or other body determines that

all or any of the provisions of Section IV are unlawful or otherwise unenforceable.

SECTION 15.02 -- In the event of termination as provided in Section 15.01 above, future rental shall be abated as of the date Lessee ceases operation and no equity in title shall be deemed to have been accumulated by Lessee except as provided in Section 8.03. Lessee shall be liable for, and pay to Lessor, all rent accruing prior to the date of such termination.

SECTION 15.03 -- In the event this Lease is terminated, Lessee shall cooperate with Lessor and/or its designee in obtaining operating rights equivalent to those enjoyed by Lessee. Lessee shall assign all Lessee agreements affecting the Leased Premises to Lessor.

SECTION 15.04 -- In the event of termination of this Lease, Lessee shall vacate the Leased Premises in an orderly manner. Upon any termination resulting from an Event of Default by Lessee, Lessor or its designee may immediately re-enter and take possession of the Leased Premises by providing written notice to Lessee that this Lease has been terminated. Upon any termination resulting from an Event of Default, Lessor may immediately assign this Lease to a new lessee and that lessee may immediately begin operation over the Leased Premises pursuant to the terms of this Lease. Lessor or its designee at Lessor's discretion may immediately begin operation over the Leased Premises if Lessee ceases operation on the Leased Premises.

SECTION 15.05 -- Upon any termination of this Lease, Lessee agrees to make available for sixty (60) days thereafter, without charge, any improvements thereon which it may own or hold under

lease (pursuant to Section 8.03 or otherwise) to Lessor or its designee for use in rail freight service. For an additional period of sixty (60) days, Lessor or its designee may purchase such improvements at market value less Lessee's cost of removal; PROVIDED, HOWEVER, that if Lessee receives and is willing to accept a bona fide offer to purchase any such improvement(s), Lessee shall notify Lessor and Lessor shall have the right to purchase the said improvement for the same price offered to Lessee within fifteen (15) days of Lessor's receipt of such notice.

SECTION 15.06 -- Within thirty (30) days of receipt by Lessee of Lessor's notice of termination, or Lessee's notice to Lessor of termination, as provided for above, Lessee shall file any and all required applications or filings with the ICC or other body requesting and securing authority to abandon and cease operations over the Leased Premises. In the event Lessee fails, refuses or neglects to take such action or fails to diligently pursue same to conclusion, Lessee agrees to pay to Lessor, as liquidated damages, the sum of \$1 million per month for each month during the first year or portion thereof following such failure, refusal or neglect; \$2 million per month during the second such year; \$5 million per month during the third such year; and \$10 million for every month thereafter. In the event of termination of this Agreement, Lessee shall assign all agreements affecting the Leased Premises to Lessor.

If Lessor terminates this Lease as a result of the imposition by the ICC of any conditions or restrictions which will result in expenses, losses or damages to Lessor, Lessee may agree, in lieu of termination, and upon consent of Lessor, which consent

shall not be unreasonably withheld, to indemnify, reimburse and hold Lessor harmless from and against all such expenses, costs and damages for the duration of this Lease.

SECTION XVI
COMPLIANCE WITH LAW

SECTION 16.01 -- Lessee agrees to comply with all provisions of law, and Lessee will not knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law or ordinances. Lessee further agrees to use its best efforts to secure all necessary governmental authority for its operation on the Leased Premises.

SECTION XVII
FORCE MAJEURE

SECTION 17.01 -- Lessee shall have no obligation to operate over any portion of the Leased Premises as to which it is prevented from operating by Acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control; PROVIDED, HOWEVER, Lessee shall use its best efforts to take whatever action is necessary or appropriate to be able to resume its operations. In the event of damage or destruction caused by an Act of God, Lessee shall commence repairs within 10 days of the occurrence causing same and shall pursue such repairs with reasonable diligence.

SECTION 17.02 -- In the event the cost of such repairs are such that Lessee will be unable to recover or recoup such costs within a reasonable period of time, not less than seven (7) years, following completion of the repairs, Lessee may, upon verification of the foregoing, seek relief from Lessor and request that Lessor permit it to abandon the affected segment of the line in question. In the event Lessor determines that Lessee will not in fact be able

to recoup its repair costs, Lessor shall grant permission to Lessee to seek abandonment from the ICC. In the event the ICC approves such abandonment, this Lease shall be amended to delete the segment in question from this Lease, but rental shall remain the same.

SECTION XVIII
DEFEASANCE

SECTION 18.01 -- Lessee shall not make any use of the Leased Premises inconsistent with Lessor's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than Lessor or Railroad. So long as the Leased Premises are sufficient to permit Lessee to operate between the termini described in Section I, this Lease shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of the Leased Premises is vested in a person other than Lessor or Lessee, and there shall be no abatement of rent on account of such determination. Lessor and Lessee shall make all reasonable efforts to defend Lessor's title to the Leased Premises against any adverse claims.

SECTION XIX
EVENTS OF DEFAULT

SECTION 19.01 -- The following shall be Events of Default:

(a) Failure by Lessee to make payments of rent or other amounts due and payable for any reason arising in connection with this Lease or Lessee's operation over the Leased Premises, and such failure continues for ten (10) days following written demand therefor.

(b) Filing of petition for bankruptcy, reorganization or arrangement of Lessee by Lessee pursuant to the Bankruptcy Reform

Act or any similar proceeding, which petition is not dismissed within thirty (30) days.

(c) Lessee breaches any provision of this Lease other than for the payment of rent which is subject to subparagraph (a) above, and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the Lessor or fails to commence to cure such default within thirty (30) days, or, once commenced, fails to use due diligence to complete the cure.

(d) The filing of any involuntary bankruptcy, receivership or arrangement proceeding, which filing is not dismissed within 120 days.

SECTION XX **BREACHES; REMEDIES**

SECTION 20.01 -- Upon the occurrence of any breach of any term hereof the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of forty-five (45) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 45 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Lease or at law or equity, including seeking damages and/or specific performance, as shall be necessary or

appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

SECTION 20.02 -- The failure of any party hereto to enforce at any time any of the provisions of this Lease or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Lease or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach.

SECTION XXI **ARBITRATION**

SECTION 21.01 -- If at any time a question or controversy shall arise between the parties hereto in connection with this Lease upon which the parties cannot agree, (other than questions or controversies arising under Sections XIX or XX which shall not be subject to arbitration), and if the parties agree to arbitration, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for

decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Missouri upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration

when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Lease shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

SECTION 21.02 -- Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The non-privileged books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the other parties and the arbitrator(s).

SECTION XXII
DIVISIONS, EQUIPMENT,
COMMERCIAL SUPPORT, AAR AGREEMENTS

SECTION 22.01 -- For the term of this Lease, Lessor will pay Lessee revenue divisions per loaded car on traffic originating or terminating on the Leased Premises and interchanged cars as provided in Exhibit E attached hereto and incorporated by reference herein, which divisions shall be subject to any RCAF increases or decreases as shown on Exhibit E. Such increases or decreases will be calculated annually and only one adjustment to the divisions shown in Exhibit E will be made and applied as of December 31st, to be applicable to the following calendar year.

withheld and which evaluation of the new Lessee will be consistent with then existing practices in the industry.

SECTION 23.05 -- Severability. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

SECTION 23.06 -- Headings. Article headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose.

SECTION 23.07 -- Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Missouri. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in Federal court in Missouri. Lessee's operations under this Lease shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

SECTION 23.08 -- Amendment. No modification, addition or amendments to this Lease or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

SECTION 23.09 -- Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an

original and all of which together shall be deemed to be one and the same instrument.

SECTION 23.10 -- Confidentiality. No party may disclose any of the terms of this Lease Agreement to any non-party without the prior written consent of the other party except (1) as required by law; (2) to a corporate parent, subsidiary or affiliate; or (3) to auditors retained by a party for the purpose of assessing the accuracy of charges, if, and only if, the auditor agrees in a legally binding instrument that it will abide by this confidentiality clause as if auditor were a party to this Lease Agreement. Each party agrees to indemnify the other from and against any damage suffered by a party as a result of any disclosure in violation of this confidentiality provision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the date first herein written.

MISSOURI PACIFIC RAILROAD COMPANY,

By *L.B. Ochs*
Title: *Executive Vice President - Operations*

MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC.

By *D.T. McShane*
Title: *VICE PRESIDENT*

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EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - NR PLEASANT HILL, MO TO E. OF BERGHAN, AR
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
MP 415.0 TO MP 643.13

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
CA11064	ATHOL, MO	ITA	TYNER CONSTRUCTION C	81.79	00000000
CA13463	HARRISONVILL, MO	ITA	UNITED CLAY PRODUCTS	.00	00000000
CA18241	CARTHAGE, MO	ITA	MISSOURI STATE HIGHW	526.45	00000000
CA19160	PANAMA, MO	PVT RD	R. K. SMITH COAL CO.	588.43	00000000
CA22657	BRANSON, MO	ITA	MISSOURI FARMERS ASS	447.60	00000000
CA22716	CARTHAGE, MO	ITA	CARTHAGE MARBLE CORP	527.60	00000000
CA2277	CARTHAGE, MO	PVT RD	JOHN CARTER	267.00	00000000
CA25690	JASPER, MO	PVT RD	JAMES W. BOWERS	538.18	00000000
CA3029	CARTHAGE, MO	PVT RD	JOHN CARTER	266.00	00000000
CA31254	ORE, MO	PVT RD	J. C. FOOTE	354.23	00000000
CA32072	NEVADA, MO	PVT RD	GEORGE T. COLLINS	310.67	00000000
CA3238	CARTHAGE, MO	ITA	CARTHAGE CRUSHED LIM	527.20	00000000
CA32514	LAHAR, MO	PUB RD	STATE HIGHWAY COMMIS	549.87	00000000
CA33412	MILO, MO	PVT RD	VERNON, EATON	568.55	00000000
CA33475	CARTHAGE, MO	ITA	FAIRVIEW CONCRETE PR	366.72	00000000
CA34700	CARTHAGE, MO	ITA	STEADLY CO., THE	.00	00000000
CA37835	CARTHAGE, MO	ITA	CARTHAGE MARBLE CORP	163.47	00000000
CA43517	LAHAR, MO	PVT RD	CITY OF LAHAR, MO.	.00	00000000
CA44021	BUTLER, MO	ITA	DAVIS, EUGENE	604.44	00000000
CA44179	STOTTS CITY, MO	ITA	C.H. ATKINSON PAVING	.00	00000000
CA44228	BRANSON, MO	ITA	MEER LUMBER YARD, IN	447.00	00000000
CA44799	CARTHAGE, MO	DRAINAGE	CARTHAGE LEVEE DISTR	526.60	00000000
CA44899	BRANSON, MO	PVT RD	EDWIN H AEBLE & MELE	.00	00000000
CA4522	CRANE, MO	ITA	STONE COUNTY OIL CO.	459.00	00000000
CA46773	RICH HILL, MO	ITA	PEOPLES ELEVATOR CO.	.00	00000000
CA46783	SHELDON, MO	ITA	SHELDON GRAIN & LBR.	.00	00000000
CA46934	AURORA, MO	PUB RD	STATE HIGHWAY COMMIS	489.30	00000000
CA48525	CARTHAGE, MO	ITA	ST. LOUIS-SAN FRANCI	527.60	00000000
CA48570	CARTHAGE, MO	ITA	AMOCO OIL CO.	527.60	00000000
CA49694	BRANSON, MO	ITA	TABLE ROCK ASPHALT C	447.30	00000000
CA50170	BRANSON, MO	ITA	TABLE ROCK ASPHALT C	447.30	00000000
CA51140	CRANE, MO	ITA	WILEY FEED CO.	478.00	00000000
CA513820	ARTHUR, MO	DRAINAGE	STATE OF MO, ACTING B	587.60	00000000
CA51805	JASPER, MO	PVT RD	SNYDER CONSTRUCTION	539.75	00000000
CA52587	BRANSON, MO	ITA	MORRISON-KNUDSEN COM	181.00	00000000
CA52796	BRANSON, MO	ITA	HUSKY INDUSTRIES, IN	.00	00000000
CA55200	ARCHIE, MO	ITA	MFA INCORPORATED	620.00	00000000
CA5529	CRANE, MO	PVT RD	ALBERT ELLIS	472.00	00000000
CA56734	BUTLER, MO	ITA	BUTLER GRAIN CO.	605.50	00000000
CA57380	CARTHAGE, MO	ITA	JOPLIN, CHAT, SAND A	.00	00000000
CA58307	CARTHAGE, MO	ITA	CAGLE, VERNON H.	.00	00000000
CA58734	BUTLER, MO	PUB RD	CITY OF BUTLER (MISS	.00	00000000
CA59212	HARRISONVILL, MO	ITA	JUSTIN INDUSTRIES, I	613.20	00000000
CA59383	CARTHAGE, MO	ITA	CARTHAGE CRUSHED LIM	.00	00000000
CA61138	LARUSSELL, MO	PUB RD	STATE OF MISSOURI, A	513.07	00000000
CA61230	CARTHAGE, MO	PVT RD	ARDELL R MOORE	162.32	00000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - NR PLEASANT HILL, MO TO E. OF BERGMAN, AR
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
MP 418.0 TO MP 643.13

DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
CA62107	HARRISONVILL.,MO	PUB RD	STATE OF MISSOURI, A	632.25	0000000
CA62227	HARRISONVILL.,MO	PUB RD	STATE OF MISSOURI, A	.00	0000000
CA63138	BRANSON,MO	PVT RD	JAMES F MURPHY	449.65	0000000
CA63277	NEVADA,MO	PVT RD	MERL D. FELLOWS	319.35	0000000
CA63833	HOLLISTER,MO	ITA	HUSKY INDUSTRIES, IN	445.80	0000000
CA65629	HARRISONVILL.,MO	TRK MTL	B & H FREIGHT LINES	.00	0000000
CA65688	CARTHAGE,MO	ITA	MOORE FEED AND SUPPL	530.00	0000000
CA65806	CARTHAGE,MO	ITA	SAFENAY STORES, INC.	366.48	0000000
CA66214	HORTON,MO	PUB RD	STATE OF MISSOURI AC	580.00	0000000
CA66402	GALENA,MO	INTRLCKR	HARRIS COUNTY HOUSTO	.00	0000000
CA66403	CARTHAGE,MO	ITA	LEGGETT AND PLATT IN	526.40	0000000
CA66943	HOBERG,MO	PVT RD	THE CURATORS OF THE	500.60	0000000
CA67600	AURORA,MO	JT TRK	THE TEXAS AND PACIFI	268.90	0000000
CA68517	CARTHAGE,MO	ITA	CARTHAGE MARBLE CORP	528.00	0000000
CA69479	PANAMA,MO	PVT RD	JIM TIONI	589.95	0000000
CA70891	CARTHAGE,MO	ITA	FAUBION MANUFACTURIN	366.28	0000000
CA71570	CRANE,MO	ITA	VHAR FARM STORE	478.50	0000000
CA72355	JASPER,MO	ITA	HAUBEIN, CLOVIS W.	538.75	0000000
CA72407	SHELDON,MO	ITA	FARMLAND INDUSTRIES,	561.20	0000000
CA7266	AURORA,MO	JT TRK	BURLINGTON NORTHERN	.00	0000000
CA72759	CARTHAGE,MO	*****	LOUISVILLE AND NASHV	.00	0000000
CA73243	ARCHIE,MO	ITA	MFA INCORPORATED	620.30	0000000
CA73342	CRANE,MO	PUB RD	STATE OF MISSOURI, A	473.60	0000000
CA73343	STOTTS CITY,MO	PUB RD	STATE OF MISSOURI, A	506.50	0000000
CA73476	ADRIAN,MO	ITA	CENTRAL COOPERATIVE,	613.19	0000000
CA73667	CRANE,MO	ITA	VHAR FARM STORE	478.50	0000000
CA73765	CARTHAGE,MO	PUB RD	STATE OF MISSOURI, A	361.10	0000000
CA73775	SHELDON,MO	PUB RD	STATE OF MISSOURI, A	.00	0000000
CA74429	BUTLER,MO	ITA	HEIMAN AGRI-SERVICE,	605.10	0000000
CA74519	NEVADA,MO	ITA	MISSOURI KANSAS TEXA	574.60	0000000
CA74645	CARTHAGE,MO	ITA	JM POULTRY PACKING C	527.90	0000000
CA75179	CARTHAGE,MO	ITA	SOUTHERN MISSOURI GR	528.40	0000000
CA75278	PASSAIC,MO	ITA	MISSOURI FARMERS ASS	609.30	0000000
CA75911	CARTHAGE,MO	ITA	BENNIE & JANE STEEPL	529.00	0000000
CA76171	LARUSSELL,MO	ITA	EMPIRE DISTRICT ELEC	515.19	0000000
CA76283	CRANE,MO	ITA	VHAR FARM STORE	478.50	0000000
CA76333	IRWIN,MO	PUB RD	STATE OF MISSOURI, A	556.30	0000000
CA76334	JASPER,MO	PUB RD	STATE OF MISSOURI, A	538.70	0000000
CA76335	JASPER,MO	PUB RD	STATE OF MISSOURI, A	533.70	0000000
CA76336	MILO,MO	PUB RD	STATE OF MISSOURI, A	568.30	0000000
CA76796	PASSAIC,MO	PUB RD	STATE OF MISSOURI AC	609.20	0000000
CA76815	IRWIN,MO	ITA	MISSOURI FARMERS ASS	556.46	0000000
CA77454	LARUSSELL,MO	PUB RD	STATE OF MISSOURI AC	513.10	0000000
CA77495	LAMAR,MO	ITA	BARTON COUNTY FARMER	550.00	0000000
CA77881	BUTLER,MO	PUB RD	STATE OF MISSOURI AC	18.08	0000000
CA78130	CARTHAGE,MO	PUB RD	STATE OF MISSOURI AC	115.00	0000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - NR PLEASANT HILL, MO TO E. OF BERGMAN, AR
MP 411.0 TO MP 643.13

DATE: 10/31/92

AUDITHO	LOCATION	TYPE	PARTY	MP	FOLDER
CA78187	BRANSON, MO	ITA	L AND J PLUMBING CON	450.00	0000000
CA78474	CARTHAGE, MO	*****	BEVERAGE PRODUCTS CO	.00	0000000
CA78479	CARTHAGE, MO	*****	JOE HARDING, INCORPO	.00	0000000
CA78907	JASPER, MO	ITA	MANEVAL, INC.	538.20	0000000
CA79975	BUTLER, MO	ITA	HEIHAN AGRI-SERVICE,	605.00	0000000
CAS0569	BUTLER, MO	ITA	MISSOURI FARMERS ASS	604.44	0000000
CAS1607	CARTHAGE, MO	*****	ARMCO, INC.	.00	0000000
CAS3672	AURORA, MO	ITA	MONEYMAKER FEED	268.10	0000000
CAS5152	CARTHAGE, MO	ITA	LOCARNI MARBLE COMPA	527.80	0000000
CAS5404	HOLLISTER, MO	ITA	STRAHAN, JOHN JR. &	445.70	0000000
CAS6395	NEVADA, MO	ITA	SPRAU	999.00	0000000
CAS6686	BRANSON, MO	ITA	TABLE ROCK ASPHALT C	118.50	0000000
CAS7847	CARTHAGE, MO	ENG PROT	MISSOURI, ACTING BY	527.30	0000000
CAS7848	BRANSON, MO	ENG PROT	MISSOURI HIGHWAY AND	447.30	0000000
CAS8278	HORTON, MO	PVT RD	PHISTER RANCH	585.24	0000000
CAS8327	HARRISONVILL, MO	PUB RD	MISSOURI, STATE OF,	631.20	0000000
CAS8328	HARRISONVILL, MO	PUB RD	MISSOURI, STATE OF,	633.20	0000000
CAS8343	HARRISONVILL, MO	PUB RD	MISSOURI, STATE OF,	633.30	0000000
CAS8482	BERGMAN, AR	ITA	TYSON FOODS, INC.	416.00	0000000
CAS8797	BERGMAN, AR	PVT RD	TYSON FOODS, INC	416.00	0000000
CAS9491	NEVADA, MO	*****	SOUTHEAST KANSAS RAI	572.62	0000000
CAS9511	AURORA, MO	ITA	LITTLE TIKES COMPANY	490.80	0000000
CA9236	NEVADA, MO	JT TRK	MISSOURI-KANSAS-TEXA	574.90	0000000
C10298	PASSAIC, MO	PVT RD	EVERETT BRANDON	67.42	0000000
C10968	CARTHAGE, MO	ITA	CARTHAGE ICE & COLD	530.50	0000000
C12228	PANAMA, MO	ITA	PERRY-MCHAMAN COAL C	.00	0000000
C2610	LAHAR, MO	TRK MTL	ST. LOUIS-SAN FRANCI	.00	0000000
C2809	CARTHAGE, MO	DRAINAGE	CITY OF CARTHAGE, MO	.00	0000000
C5340	PLEASANT HIL, MO	TRK MTL	CRI&P RY. CO.	.00	0000000
C5520	HARRISONVILL, MO	PVT RD	THOS. D. RYAN, EXECU	630.70	0000000
C5735	CARTHAGE, MO	ITA	CARTHAGE SUPERIOR LI	527.60	0000000
C5862	RICH HILL, MO	ITA	D. REES COAL CO. RIC	.00	0000000
C5893	PLEASANT HIL, MO	PUB RD	BIG CREEK TOWNSHIP,	640.40	0000000
C6586	RICH HILL, MO	ITA	SOUTHWEST MISSOURI C	.00	0000000
C6710	HARRISONVILL, MO	ITA	IMPROVED SCALE & FUY	.00	0000000
C7090	CARTHAGE, MO	ITA	CARTHAGE SUPERIOR LI	527.60	0000000
C7854	HARRISONVILL, MO	ITA	EAGLE SCALE & MFG CO	.00	0000000
C8242	LAKE SIDE, MO	ITA	CONSOLIDATED MARBLE	136.50	0000000
C8284	ATHOL, MO	DRAINAGE	DRAINAGE DIST. #1 OF	999.90	0000000
C8318	BOSTON, MO	PVT RD	WE SPARM	133.71	0000000
C8356	BUTLER, MO	PVT RD	HA HERMAN	6.20	0000000
C8580	LAHAR, MO	INTRUCKR	BURLINGTON NORTHERN	93.00	0000000
C8650	HORTON, MO	PVT RD	MARY MITCHELL	97.15	0000000
C9281	PANAMA, MO	ITA	EUREKA COAL MINING &	.00	0000000
C9288	NEVADA, MO	PVT RD	C. G. SYNGS	98.86	0000000
C9529	RICH HILL, MO	ITA	HECHORE MINING CO.	.00	0000000
C9545-2	RICH HILL, MO	ITA	BATES COAL MINING &	.00	0000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - NW PLEASANT HILL, MO TO E. OF BERGMAN, AR
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
MP 415.0 TO MP 643.13

DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
KT25022	NEVADA, MO	JT ITA	MISSOURI PACIFIC RAI	.00	00000000
KT25694	NEVADA, MO	JT ITA	MISSOURI PACIFIC RAI	.00	00000000
KT30578	NEVADA, MO	XNG PROT	MISSOURI PACIFIC RAI	.00	00000000
KT30579	NEVADA, MO	INTERCHG	MISSOURI PACIFIC RAI	.00	00000000
KT812	NEVADA, MO	INTRLCR	MISSOURI PACIFIC RAI	.00	00000000
LA25829	RICH HILL, MO	ITA	TERRA INTERNATIONAL,	593.20	00000000
R10372	AURORA, MO	ITA	AURORA GROCERY COMPA	232.00	00000000
R11587	HOBERG, MO	PVT RD	H.C. MEANS	505.00	00000000
R13183	CRANE, MO	ITA	RUSSELL LUMBER CO.	480.00	00000000
R5203	AURORA, MO	INTRLCR	BURLINGTON NORTHERN	.00	00000000
R7849	AURORA, MO	ITA	M. F. A. MILLING COM	232.00	00000000
R8039	HOBERG, MO	PVT RD	AUGUST CARL, HOBERG,	502.95	00000000
R8344	GALENA, MO	PVT RD	JOHN MORRIS	470.00	00000000
R8461	HOBERG, MO	PVT RD	ROY McDONALD AND KEN	499.31	00000000
R8710	HOLLISTER, MO	PVT RD	MISS BIRDIE ATWOOD	440.50	00000000
R9497	HOLLISTER, MO	DRAINAGE	I.D.H. STRAHAN	448.00	00000000
R9498	HOLLISTER, MO	DRAINAGE	I.D.H. STRAHAN	448.00	00000000
R9785	AURORA, MO	DRAINAGE	JOHN F MCKINLEY, AURO	226.55	00000000
TC16798	CRESCENT HIL, MO	PVT RD	LT HUMNICOTT	106.12	00000000
12506	CRICKET, AR	PVT RD	T.F. ROBERTSON	.00	00000000
144381	ADRIAN, MO	XNG PROT	MISSOURI, STATE OF M	614.10	00000000
145348	BERGMAN, AR	PVT RD	DUANE DEAN	418.28	00000000
155403	ADRIAN, MO	ITA	ADRIAN BANK	614.43	0801416
156605	NEVADA, MO	ITA	TERRA INTERNATIONAL,	999.00	0801877
163573	AURORA, MO	ITA	DEICOR LABORATORIES	489.50	0805147
27122	CRICKET, AR	PUB RD	COUNTY OF BOONE, ARK	432.70	00000000
339	NEVADA, MO	PUB RD	LITTLE ROCK BRICK WO	.00	00000000
54408	CRICKET, AR	PVT RD	TABLE ROCK ASPHALT C	435.05	00000000
63533	HOLLISTER, MO	ITA	HUSKY INDUSTRIES INC	.00	00000000
76330	CRANE, MO	PUB RD	STATE OF MO.	477.80	00000000
76331	CRESCENT HIL, MO	PUB RD	STATE OF MO.	275.40	00000000
79047	CRANE, MO	PUB RD	STATE OF MO.	478.50	00000000
79669	HOLLISTER, MO	ITA	THE SCHOOL OF THE OZ	.00	00000000
80895	BERGMAN, AR	PVT RD	THOMAS T. MILLARD	418.68	00000000
85404-2	HOLLISTER, MO	ITA	JOHN STRAHAN, JR. &	.00	00000000
863	CRICKET, AR	PVT RD	E.L. HALST	432.70	00000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - GUION, AR TO DIAZ, AR
MP 313.0 TO MP 289.05 - CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
CA14219	GUION, AR	ITA	WOLFORD MARBLE COMPA	.00	0000000
CA17902	SULPHUR ROCK, AR	PVT RD	W.E. DODD	279.00	0000000
CA22315	BATESVILLE, AR	ITA	ARKANSAS BLACK MARBL	286.10	0000000
CA2314	BATESVILLE, AR	ITA	BATESVILLE COMPRESS	286.10	0000000
CA24710	SULPHUR ROCK, AR	PVT RD	CECIL SMITH	276.30	0114089
CA34335	BATESVILLE, AR	ITA	SIMS GROCER COMPANY	.00	0000000
CA34445	BATESVILLE, AR	ITA	CITIES SERVICE COMPA	.00	0000000
CA35051	BATESVILLE, AR	ITA	WILROY, R. D.	.00	0000000
CA35130	BATESVILLE, AR	ITA	HINES LUMBER COMPANY	286.10	0000000
CA39339	BATESVILLE, AR	ITA	STONE PRODUCTS, INC.	235.86	0000000
CA42510	BATESVILLE, AR	ITA	NORTH ARKANSAS FARM	.00	0000000
CA42548	GUION, AR	ITA	SILICA PRODUCTS CO.,	.00	0000000
CA45027	BATESVILLE, AR	ITA	BATESVILLE GROCERY C	.00	0000000
CA45090	BATESVILLE, AR	ITA	WILF'S FEED MILL	.00	0000000
CA46214	DIAZ, AR	ITA	KSH ENTERPRISES, INC	.00	0000000
CA47656	GUION, AR	ITA	SILICA PRODUCTS COMP	.00	0000000
CA48175	BATESVILLE, AR	ITA	LEONARD, E. W. & P.	286.10	0000000
CA51224	BATESVILLE, AR	ITA	RIVERSIDE MILLING CO	286.08	0000000
CA52761	BATESVILLE, AR	ITA	BATESVILLE RUBBER CO	.00	0000000
CA53738	DIAZ, AR	ITA	KSH ENTERPRISES, INC	259.10	0000000
CA60401	BATESVILLE, AR	ITA	LANIER FEED MILL, IN	286.90	0000000
CA61680	BATESVILLE, AR	ITA	MIDWEST LIME COMPANY	286.10	0000000
CA6192	BATESVILLE, AR	PUB RD	NORTH ARK. HWY IMPRO	292.70	0000000
CA65282	BATESVILLE, AR	PUB RD	ARK. STATE HIGHWAY CO	283.66	0000000
CA67908	MOOREFIELD, AR	PUB RD	ARKANSAS STATE HIGHW	280.55	0000000
CA68397	BATESVILLE, AR	PUB RD	ARK. ST. HIGHWAY COMMI	286.00	0000000
CA69783	BATESVILLE, AR	ITA	COLLIER, J. W.	.00	0000000
CA70266	GUION, AR	ITA	GEARK SILICA CORPORA	.00	0000000
CA71357	BATESVILLE, AR	ITA	BANQUET FOODS CORFOR	285.90	0000000
CA71612	BATESVILLE, AR	ITA	INTERNATIONAL PAPER	281.38	0000000
CA72128	BATESVILLE, AR	ITA	BRYANT, DONNIE MACH-	283.80	0000000
CA73581	BATESVILLE, AR	ITA	NORTH ARKANSAS FARM	286.10	0000000
CA74316	BATESVILLE, AR	ITA	GENERAL TIRE & RUBBE	286.10	0000000
CA74742	DIAZ, AR	ITA	CITY OF NEWPORT	259.50	0000000
CA75209	SULPHUR ROCK, AR	PUB RD	ARKANSAS STATE HIGHW	277.80	0000000
CA75282	DIAZ, AR	ITA	B AND J PLANT FOOD,	259.50	0000000
CA77204	MAGNESS, AR	ITA	EASTMAN KODAK COMPAN	273.60	0000000
CA77582	BATESVILLE, AR	PUB RD	ARK. STATE HIGHWAY CO	.00	0000000
CA80442	NEWARK, AR	ITA	ARKANSAS POWER & LIC	.00	0000000
CA83952	MYERSVILLE, AR	INTRLCCKR	CAVANESS RENTAL & EN	107.60	0000000
LA30617	BATESVILLE, AR	ITA	SYNERGY GAS CORPORAT	286.00	0000000
LA30618	NEWARK, AR	ITA	SYNERGY GAS CORPORAT	270.30	0116126
R14192	BATESVILLE, AR	ITA	PADGETT POOL LBR CO	288.00	0000000
R9658	BATESVILLE, AR	ITA	MOUNT OLIVE STOVE CO	288.00	0000000
148795	GUION, AR	PUB RD	ARKANSAS, STATE OF	312.76	0000000
149052	GUION, AR	JFC AGMT	ARKANSAS STATE HIGHW	312.76	0000000
151359	BATESVILLE, AR	ITA	CONAGRA	286.00	0000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF CARTHAGE BRANCH - GUION, AR TO DIAZ, AR
MP 313.0 TO MP 259.05 - CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
DATE: 10/31/92

<u>ADDITNO</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>PARTY</u>	<u>MP</u>	<u>FOLDER</u>
152	DIAZ, AR	FVT RD	ROBERT WEST	.00	0000000
155904	GUION, AR	ITA	UNIHIN CORPORATION	312.00	0801640
162476	BATESVILLE, AR	ITA	PROCTER & GAMBLE HAN	285.00	0806270
29427	BATESVILLE, AR	FVS RD	ROBERT KELLEY	286.10	0000000
350	DIAZ, AR	FVT RD	J.C. MASTERS	259.50	0000000
353	DIAZ, AR	FVT RD	T.G. KIMBERLIN & CO.	259.50	0000000
5447	DIAZ, AR	FVT RD	WILMANS MERCANTILE C	259.50	0000000
68954	BATESVILLE, AR	FVT RD	HERMAN MILLER	284.65	0000000
73093	BATESVILLE, AR	FVT RD	JOHN E. BRYANT & SON	286.10	0000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF WEBB CITY BRANCH-CARTHAGE, MO TO JOPLIN, MO
LEASE OF ATLAS BRANCH-WEBB CITY TO ATLAS, MO
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
NOTE: AGREEMENTS & CARTHAGE ARE ON CARTHAGE LIST

DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	AMOUNT	MF FOLDER
CA10122	WEBB CITY, MO	ITA	PRODUCERS GRAVEL CO.	.00	00000000
CA12602	WEBB CITY, MO	ITA	INDEPENDENT GRAVEL C	.00	00000000
CA16089	JOPLIN, MO	INTRLCKR	BURLINGTON NORTHERN	112.24	00000000
CA17110	WEBB CITY, MO	ITA	INDEPENDENT GRAVEL C	.00	00000000
CA17888	JOPLIN, MO	ITA	JOPLIN STOCK YRS., I	.00	00000000
CA2126	WEBB CITY, MO	ITA	PRODUCERS GRAVEL CO.	.00	00000000
CA23925	WEBB CITY, MO	DRAINAGE	CENTRAL DRAINAGE DIS	.00	00000000
CA28173	WEBB CITY, MO	ITA	BURGER-SOUDAN-WATTE	.00	00000000
CA26262	WEBB CITY, MO	ITA	WEBB CITY & CARTERVI	.00	00000000
CA26263	WEBB CITY, MO	ITA	WEBB CITY WHOLESALE	.00	00000000
CA26264	WEBB CITY, MO	ITA	D. E. CLARK OIL CO.	.00	00000000
CA32513	WEBB CITY, MO	PUB RD	STATE HIGHWAY COMBIS	373.60	00000000
CA33361	JOPLIN, MO	ITA	TAMCO ASPHALT PRODUC	.00	00000000
CA33766	WEBB CITY, MO	ITA	SCOTT A. POWERS	.00	00000000
CA35082	WEBB CITY, MO	ITA	TRI-STATE CHEMICAL C	.00	00000000
CA40343	JOPLIN, MO	ITA	JOPLIN REPAIRING CO.	.00	00000000
CA43018	JOPLIN, MO	ITA	CONCRETE MASONRY PRO	.00	00000000
CA43225	JOPLIN, MO	ITA	R.J. ALLISON CO. (R.	.00	00000000
CA5146	WEBB CITY, MO	PVT RD	INDEPENDENT GRAVEL C	374.15	00000000
CA52643	WEBB CITY, MO	PUB RD	STATE HIGHWAY COMBIS	369.63	00000000
CA55949	WEBB CITY, MO	ITA	INDEPENDENT GRAVEL C	.00	00000000
CA62685	JOPLIN, MO	ITA	BERNARD LUMBER COMPA	.00	00000000
CA70883	JOPLIN, MO	PUB RD	THE STATE OF MISSOURI	164.60	00000000
CA71498	JOPLIN, MO	PUB RD	STATE OF MISSOURI, A	378.55	00000000
CA74844	JOPLIN, MO	PUB RD	STATE OF MISSOURI, A	378.80	00000000
CA76876	WEBB CITY, MO	ITA	OMER CARROTHERS INDU	375.70	00000000
CA78101	WEBB CITY, MO	PUB RD	STATE OF MISSOURI AC	126.00	00000000
CA78131	WEBB CITY, MO	PUB RD	STATE OF MISSOURI AC	378.70	00000000
CA79054	WEBB CITY, MO	PUB RD	STATE OF MISSOURI AC	377.50	00000000
CA81830	JOPLIN, MO	ITA	TAMCO ASPHALT PRODUC	378.30	00000000
CA85919	WEBB CITY, MO	PUB RD	WEBB CITY, MISSOURI	.00	00000000
CA87334	WEBB CITY, MO	KMC PERK	STATE OF MISSOURI	537.50	00000000
CA88132	WEBB CITY, MO	PUB RD	MISSOURI, STATE OF,	376.10	00000000
CA88334	JOPLIN, MO	PUB RD	MISSOURI, STATE OF,	380.50	00000000
CA9780	WEBB CITY, MO	ITA	JOPLIN CRUSHED FLINT	.00	00000000
C10167	JOPLIN, MO	PUB RD	THE PUBLIC SERVICE C	133.00	00000000
C10805	WEBB CITY, MO	ITA	WEBB CITY & JOPLIN S	.00	00000000
C1413	JOPLIN, MO	INTRLCKR	BURLINGTON NORTHERN	545.20	00000000
C1414	JOPLIN, MO	INTRLCKR	BURLINGTON NORTHERN	546.10	00000000
C1457	JOPLIN, MO	INTRLCKR	BURLINGTON NORTHERN	544.90	00000000
C3111	JOPLIN, MO	ITA	THE ROGERS & NIX GRO	.00	00000000
C3191	JOPLIN, MO	INTRLCKR	BURLINGTON NORTHERN	381.50	00000000
C3319	WEBB CITY, MO	ITA	DAVEY & HENDERSON WE	.00	00000000
C3770	WEBB CITY, MO	ITA	MISSOURI ZINC FIELDS	.00	00000000
C3857	WEBB CITY, MO	ITA	E. M. BAKER, JASPER	.00	00000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF WEBB CITY BRANCH-CARTAGE, MO TO JOPLIN, MO
LEASE OF ATLAS BRANCH-WEBB CITY TO ATLAS, MO
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
NOTE: AGREEMENTS & CARTAGE ARE ON CARTAGE LIST

DATE: 10/31/93

<u>ADDITNO</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>PARTY</u>	<u>MP</u>	<u>FOLDER</u>
C4152	CENTER CREEK, MO	ITA	HERCULES POWDER CO.,	532.70	0000000
CS458	FURCELL, MO	ITA	MC DANIEL MILLING CO	.00	0000000
C4135	WEBB CITY, MO	ITA	INDEPENDENT GRAVEL C	.00	0000000
C929	JOPLIN, MO	INTLCKR	KANSAS CITY SOUTHERN	544.20	0000000
145505	JOPLIN, MO	PUR RD	MISSOURI. STATE OF M	542.60	0000000
164812	JOPLIN, MO	ITA	RAILROAD SALVAGE & R	544.55	0807899

EXHIBIT A
CONTRACTS & REAL-ESTATE DEPARTMENT
LEASE OF WEBB CITY BRANCH-CARTHAGE, MO TO JOPLIN, MO
LEASE OF ATLAS BRANCH-WEBB CITY TO ATLAS, MO
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS
NOTE: AGREEMENTS @ CARTHAGE ARE ON CARTHAGE LIST
DATE: 10/31/92

AUDITNO -----	LOCATION -----	TYPE ----	PARTY -----	MP FOLDER -----
CA12143	JOPLIN , MO	INTERHC	KANSAS CITY SOUTH	00 0000000

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF SPRINGFIELD BRANCH - WALLIS-SPRINGFIELD, MO AREA
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS

DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
CA20843	SPRINGFIELD,MO	ITA	CHRISTOPHER PRODUCE	511.00	0000000
CA23647	SPRINGFIELD,MO	ITA	BURLINGTON NORTHERN	.00	0000000
CA28681	SPRINGFIELD,MO	ITA	BURLINGTON NORTHERN	.00	0000000
CA29884	SPRINGFIELD,MO	ITA	BURLINGTON NORTHERN	.00	0000000
CA33240	SPRINGFIELD,MO	ITA	BORTON STONE CO. (GE	.00	0000000
CA35916	SPRINGFIELD,MO	ITA	SOUTHWESTERN BELL TE	.00	0000000
CA40310	SPRINGFIELD,MO	ITA	BIEDERMAN NATIONAL S	.00	0000000
CA41103	SPRINGFIELD,MO	ITA	BURLINGTON NORTHERN	.00	0000000
CA43233	SPRINGFIELD,MO	TRK MTL	ST. LOUIS - SAN FRAN	.00	0000000
CA44449	SPRINGFIELD,MO	ITA	RALPH H. LONG	.00	0000000
CA47893	SPRINGFIELD,MO	ITA	R. P. STIEFVATER	.00	0000000
CA47894	SPRINGFIELD,MO	ITA	ST. LOUIS - SAN FRAN	.00	0000000
CA51477	SPRINGFIELD,MO	JT TRK	BURLINGTON NORTHERN	.00	0000000
CA51693	SPRINGFIELD,MO	JT TRK	ST. LOUIS SAN FRANCI	.00	0000000
CA54341	SPRINGFIELD,MO	PVT RD	ALTON PACKAGING CORP	.00	0000000
CA5600	SPRINGFIELD,MO	ITA	BURLINGTON NORTHERN	.00	0000000
CA58316	SPRINGFIELD,MO	ITA	HUGH DENNIS GREAS &	999.00	0000000
CA64146	SPRINGFIELD,MO	ITA	CHAMPION INTERNATION	511.10	0000000
CA6428	SPRINGFIELD,MO	ITA	SLF PT. CO.	.00	0000000
CA71525	SPRINGFIELD,MO	ITA	SYNTEX AGRIBUSINESS,	512.10	0000000
CA72001	SPRINGFIELD,MO	TRK MTL	BURLINGTON NORTHERN	.00	0000000
CA73295	SPRINGFIELD,MO	ITA	CHENITECH INDUSTRIES	506.30	0000000
CA74019	SPRINGFIELD,MO	ITA	K AND M DIETR CO INC	506.30	0000000
CA74723	SPRINGFIELD,MO	ITA	JUSTIN INDUSTRIES, I	501.42	0000000
CA74948	SPRINGFIELD,MO	ITA	SPRINGFIELD GROCER C	507.30	0000000
CA77795	SPRINGFIELD,MO	ITA	COORS OF THE OZARKS	506.90	0000000
CAB9487	SPRINGFIELD,MO	PUB RD	SPRINGFIELD MISSOURI	511.40	0000000
R10691	SPRINGFIELD,MO	ITA	W. W. WHITTAKER	.00	0000000
R13138	SPRINGFIELD,MO	ITA	SECURITY WAREHOUSE C	.00	0000000
R6377	SPRINGFIELD,MO	JT TRK	ST. LOUIS SAN FRANCI	.00	0000000
R6745	SPRINGFIELD,MO	JT TRK	BURLINGTON NORTHERN	34.00	0000000
R8546	SPRINGFIELD,MO	ITA	ST. LOUIS SF RR	.00	0000000
150282	SPRINGFIELD,MO	ITA	BASE PRO SHOPS, INC.	507.20	0000000
153715	SPRINGFIELD,MO	*****	BURLINGTON NORTHERN	999.00	0800712

EXHIBIT A
CONTRACTS & REAL ESTATE DEPARTMENT
LEASE OF THE CLINTON BRANCH - N. CLINTON, MO TO GRIFFITH, KS
CONDITIONAL ASSIGNMENT OF OPERATING AGREEMENTS

DATE: 10/31/92

AUDITNO	LOCATION	TYPE	PARTY	MP	FOLDER
CA32072	NEVADA, MO	PVT RD	GEORGE T. COLLINS	310.67	00000001
CA43277	NEVADA, MO	PVT RD	MERL D. FELLOWS	319.35	00000001
CA74519	NEVADA, MO	ITA	MISSOURI KANSAS TEXA	574.60	00000001
CA86395	NEVADA, MO	ITA	SPRAU	999.00	00000001
CA89491	NEVADA, MO	*****	SOUTHEAST KANSAS RAI	572.62	00000001
CA9236	NEVADA, MO	JT TRX	MISSOURI-KANSAS-TEXA	574.90	00000001
C9288	NEVADA, MO	PVT RD	C. G. STIMS	98.55	00000001
KT1242	FT SCOTT, KS	JFC AGMT	BURLINGTON NORTHERN	.00	00000000
KT25022	NEVADA, MO	JT ITA	MISSOURI PACIFIC RAI	.00	00000000
KT25694	NEVADA, MO	JT ITA	MISSOURI PACIFIC RAI	.00	00000000
KT30578	NEVADA, MO	XBG PROT	MISSOURI PACIFIC RAI	.00	00000000
KT30579	NEVADA, MO	INTERCHG	MISSOURI PACIFIC RAI	.00	00000000
KT31693	CLINTON, MO	PVT RD	MISSOURI FARMERS ASS	262.44	00000000
KT31947	FT SCOTT, KS	TRX LS	BROCK MARBLE & GRANI	338.07	013419
KT33549	CLINTON, MO	ITA	SCHWEISER FOODS, INC	265.77	00000000
KT37087	FT SCOTT, KS	TRX LS	DOUBLE CIRCLE FARM	338.10	00000000
KT37953	CLINTON, MO	PVT RD	FARMERS PRODUCE EXCH	262.44	00000000
KT4632	FT SCOTT, KS	INTERCHG	BURLINGTON NORTHERN	.00	00000000
KT485	FT SCOTT, KS	INTALCKR	MISSOURI PACIFIC RAI	.00	00000000
KT6070	FT SCOTT, KS	*****	MISSOURI PACIFIC RAI	.00	00000000
KT7159	FT SCOTT, KS	INTERCHG	MISSOURI PACIFIC RAI	.00	00000000
KT812	NEVADA, MO	INTALCKR	MISSOURI PACIFIC RAI	.00	00000000
156605	NEVADA, MO	ITA	TERRA INTERNATIONAL,	999.00	080187
339	NEVADA, MO	PUE RD	LITTLE ROCK BRICK WO	.00	00000000

Lease Exhibit C

MP OPEN INDUSTRIES AT:

Fort Scott, KS

Aurora, MO

Carthage, MO

Joplin, MO

Lamar, MO

Springfield, MO

NOTE: Lessor and Lessee agree to amend this exhibit upon mutual consent. Successors or assigns of these industries maintaining the same location shall also be considered open.

MP OPEN INDUSTRIES - FORT SCOTT, KS

Bruce's Marble & Granite Works

MP OPEN INDUSTRIES - AURORA, MO

Peerless Oil Corp.
MFA

MP OPEN INDUSTRIES - CARTHAGE, MO

Carthage Crushed Limestone Co.
Carthage Foundry Machine Works Co.
Carthage Marble Corp. (underground storage facility)
Carthage Water & Electric Co.
Conagra
Four States Supply Co.
Independent Gravel Co.
Independent Radi-Mex Concrete Co.
Leggett & Platt, Inc. (Plant)
Locarni Marble Co.
MFA Farmers Exchange
Missouri State Highway Dept.
Morrow Lumber Co.
Schrieber L.C., Cheese Co.
Skelly Oil Co.
Standard Oil Co.
Steadley Co.

MP OPEN INDUSTRIES - JOPLIN, MO

Concrete Masonry Products co.
General Electric Supply Corp.
Herrman Lumber Co.
Joplin Cement Co.
Joplin Stock Yards, Inc.
Maek Lumber Co.
Midwest Materials Co.
Miners Ice & Fuel Co.
Pond, C.W., Food Brokers
Ross Hide Co.
Stockyards Feed Co.
Tamko Asphalt Roofing Products

MP OPEN INDUSTRIES - LAMAR, MO

Double Circle Farm Supply
Farmers Exchange

MP OPEN INDUSTRIES - SPRINGFIELD, MO

Anderson Box Co., Inc.
Dennis, Hugh, Oil Co.
Filter & Injector Co.
Finkbiner Storage & Transfer Co.
General Warehouse Co. (No. 2)
Greene County Farmers Sales Assn.
Kennedy, W.T., Brick & Steel Co.
McGregor Bros., Inc.
Queen City Flour & Feed Co.
Quinn Coffee Co.
Southwestern Bell Telephone Co.

DIVISIONS

M&NA will receive the following charges for loaded movements on the Carthage Group made in conjunction with a Missouri Pacific/Union Pacific line haul. Rates do not apply to railway equipment moving on its own wheels. For TOFC/COFC movements, rates apply per car, not per trailer or container.

General division for the traffic not otherwise mentioned in this exhibit	\$235
All other traffic to/from Springfield/Wallis, MO	\$375
All other traffic to/from Guion, AR - Newark, AR inclusive	
via Newport	\$200
via Kansas City	\$375
All other traffic to/from Yellville or Cotter, AR	\$500

Energy

Coal (STCC 1LXXXXX):	
To Kansas City Power and Light at Ladue, MO	\$210
From Nassau Junction/MO (SEKR) to Kansas City	\$235
To Magness, AR (via Newport)	\$200
To Independence, AR (AP&L) via Newport	\$2,000
	Per Loaded Train

Grain and Grain Products

Grain and feed (STCC's 0LXXXXX, 2092XXX, and other 20XXXXX items used for feeding livestock or poultry) destined to:

Carthage, MO	\$275
Bergman, AR	\$235
Cotter, AR	\$475
Springfield, MO	\$350
Batesville, AR	
via Newport	\$150
via Kansas City	\$375

Flour (STCC 204LXXX) to Batesville, AR via Kansas City	\$375
--	-------

Chemicals

Chemicals (STCC 28XXXXX) and Petroleum Products (STCC 29XXXXX)

To:

Atlas, MO	\$235
Joplin, MO	\$300
Aurora, MO	\$400
Cotter, AR	
via Kansas City	\$500
via Newport	\$600
Magness, AR	\$200

From:

Atlas, MO	\$350
Magness, AR	\$200

Food and Food Products

Food Products (STCC 20XXXXX) in RPL's to or from Carthage, MO	\$300
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Forest Products

Lumber (STCC 24XXXXX) to Lamar, MO	\$300
Lumber, wood, pulp, or paper products (STCC's 24XXXXX and 26XXXXX) to Springfield and Wallis, MO	\$375
Roofing paper (STCC 26612XX) from Joplin, MO	\$300

Merchandise Markets

Fiberglass (STCC 32293XX) from Joplin, MO	\$235
Toys (STCC 3941191) to Aurora, MO	\$125

Metals and Minerals

Roofing granules to Joplin, MO from Little Rock, AR:	
via Newport	\$500
via Kansas City	\$300
Steel rods (STCC 33124XX) to Carthage, MO	\$350
Limestone products carrying STCC's 142XXXX, 3295XXX, and 3274XXX from Limesdale, AR	\$200
Industrial sand (STCC 14413XX) from Guion, AR	\$200

DIVISION ADJUSTMENTS

I. Special Adjustment

Effective January 1, 1995, M&NA shall grant Missouri Pacific/Union Pacific a division reduction of \$45 per car applied to all traffic except the following:

1. Coal movements to Kansas City Power & Light at Ladue, MO
2. Coal bridged between SEKK and MP/UP.
3. Traffic interchanged at Kansas City for points to/from stations east of Bergman, AR.
4. Traffic interchanged at Newport to/from stations west of and including Bergman, AR.
5. Any traffic billed to/from Wallis and Springfield, MO.
6. Grain and grain products traffic for Carthage, MO; Bergman, AR; Cotter, AR; and Batesville, AR.
7. Chemicals and petroleum products for Atlas, MO via Kansas City.

NOTE: The \$45 decrease shall be applied to the divisions after the January 1, 1995 RCAFU adjustment.

II. Annual Indexed Adjustments

The revenue divisions set forth in this Agreement shall be adjusted annually beginning January 1, 1994 and each January 1 thereafter for the Term of this Agreement. The adjustments shall be based on 50% (.50) of the annual percent change in the Unadjusted for Productivity Rail Cost Adjustment Factor (RCAFU, 1987 = 1.000) as approved and published by the Interstate Commerce Commission (ICC) in Ex Parte 290 Sub Nos. 2 & 5. The adjustments will be subject to a maximum increase of 3.0% per year.

The January 1, 1994 adjustment shall be calculated as the percent change in the first quarter 1993 RCAFU to the first quarter 1994 RCAFU. This percent change will then be multiplied by 50% (.50). This result will then be subject to a 3.0% annual cap. Subsequent January 1 adjustments shall be calculated from the first quarter RCAFU of the current year (See hypothetical example below) and multiplied by 50% (.50) and then subject to the 3.0% cap. Provided, however, application of the percent change in the RCAFU shall not reduce revenue divisions below their level on the

effective date of this Agreement (Base Rates). If the application of the RCAFU percent change would result in revenue divisions falling below the Base Rates, the Base Rates will be in effect until subsequent January 1 adjustments result in revenue divisions above the Base Rates.

If the ICC rebases the RCAFU, the rebased values will be used in the adjustment calculations. If the previous period's index value was not restated by the ICC, it will be restated with a linking factor. This linking factor will be the ratio of the RCAFU as rebased divided by the RCAFU on the old base for the last period in which the RCAFU is published on both bases. The previous period's value in need of restatement will then be multiplied by this linking factor before making the current adjustment calculations.

In calculating the adjustments, all published and any linked index values will be rounded to a thousandth of an index point; all percent change calculations will be rounded to a tenth of a percent; any linking factors will be rounded to a thousandth of a point; and all revenue divisions will be rounded to whole dollars. The rounding rule used will be that any fraction less than one half will be dropped while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the ICC ceases to publish, or materially alters the methodology by which the RCAFU is derived, the parties shall determine a substitute index. The substitute index shall be the index that most closely matches the structure of the RCAFU. The substitute index shall be used for the remainder of the contract. If within 90 days after the cancellation/alternation of the index a substitute index can not be found, any party may submit the matter to be determined by binding arbitration.

EQUIPMENT AND COMMERCIAL SERVICES

EQUIPMENT

Lessee shall be responsible for furnishing freight car equipment for loading and unloading on the Leased Premises. If Lessee does not have available freight car equipment at any given time when Lessor is to be the connecting road haul carrier, Lessor shall have the first right of refusal to furnish freight car equipment for loading on Lessee. Lessor will make every reasonable effort to supply such equipment upon receipt of reasonable notice from Lessee. If Lessor is unable to supply freight car equipment upon reasonable notice, Lessee may obtain such equipment from any other supplier.

When Lessor is the connecting road haul carrier, Lessor will provide five (5) days of car hire relief, with two exceptions, on railroad marked freight equipment provided empty by Lessor to Lessee for loading, or delivered loaded by Lessor to Lessee pursuant to the rules and interpretation of AAR Circular OT-28. The exceptions are cars billed to/from Springfield and Wallis, MO, for which seven (7) days relief will be provided. Lessee will not assess demurrage charges against its customers while car hire relief is being granted by Lessor. Lessee agrees to abide by any special demurrage relief agreements put in place by Lessor, provided that Lessee will receive additional car hire relief equal to the excess free time provided by such agreements. Lessee shall also receive additional car hire relief on pool equipment sent onto the lines in advance of customer orders; such additional relief will terminate on the date the equipment is used to fill a customer car order.

Except as set forth above, all other applicable car hire payments will be the responsibility of Lessee.

Lessee shall not use engines supplied by Lessor on interchanged unit trains for any other purpose without the express permission of Lessor. Unauthorized use of Lessor's engines shall subject Lessee to a special rental payment of two times the then current highest rental rate specified by Lessor in its standard rental tables for the power in question.

COMMERCIAL SUPPORT

Lessee will grant to Lessor Lessee's automatic concurrence in any rate, route, contract, letter quote, or other pricing action that Lessor may wish to take, as long as Lessor does not deviate from the agreed-upon divisions.

Lessee agrees to abide by any contractual service commitment between Lessor and any shipper regarding activities over which

Lessee can exercise sole control (for example, any commitment for service which is to take place only on the Leased Premises) and which is in effect as of the lease Commencement Date. In cases where Lessee has been made aware of such a commitment and a penalty is incurred for nonperformance, Lessor shall pay the penalty and bill Lessee for the penalty amount, and Lessee shall pay such amount within thirty days of its receipt of a bill from Lessor. Lessee also agrees to negotiate additional service standards for current or new business at the request of Lessor.

Lessor will make any necessary tariff or adoption notice filings required for Lessee's operation or use of the Leased Premises and Lessee agrees to promptly remit any charges that are assessed by any tariff bureau or other publishing organization governing these filings.

COMPUTER SUPPORT

Lessor will enter into separate TCS and communications agreements and the charges for the services to be provided will be negotiated separately from this Lease.

REA1116A.

**AMENDED
LEASE EXHIBIT E**

DIVISIONS

M&NA will receive the following charges for loaded movements on the Carthage Group made in conjunction with a Missouri Pacific/Union Pacific line haul ("Base Rates"). Rates do not apply to railway equipment moving on its own wheels. For TOFC/COFC movements, rates apply per car, not per trailer or container.

General division for the traffic not otherwise mentioned in this exhibit	\$ 235
All other traffic to/from Springfield/ Wallis, MO	\$ 375
All other traffic to/from Guion, AR - Newark, AR inclusive via Newport	\$ 200
via Kansas City	\$ 375
All other traffic to/from Yellville or Cotter, AR	\$ 500

Energy

Coal (STCC 11XXXXX):	
To Kansas City Power and Light at Ladue, MO	\$ 210
From Nassau Junction/MO (SEKR) to Kansas City	\$ 235
To Magness, AR (via Newport)	\$ 200
To Independence, AR (AP&L) via Newport	\$2000 ¹ \$ 975 ²
	Per Loaded Train

Applicable beginning with the effective date of the Basic Agreement through February 28, 1993.

² Applicable effective with March 1, 1993, and thereafter.

Grain and Grain Products

Grain and feed (STCC's 01XXXXXX, 2092XXX,
and other 20XXXXXX items used for feeding
livestock and poultry) destined to:

Carthage, MO	\$ 275
Bergman, AR	\$ 235
Cotter, AR	\$ 475
Springfield, MO	\$ 350
Batesville, AR	
via Newport	\$ 150
via Kansas City	\$ 375

Flour (STCC 2041XXX) to Batesville, AR	
via Kansas City	\$ 375

Chemicals

Chemicals (STCC 28XXXXXX) and Petroleum
Products (STCC 29XXXXXX)

To:

Atlas, MO	\$ 235
Joplin, MO	\$ 300
Aurora, MO	\$ 400
Cotter, AR	
via Kansas City	\$ 500
via Newport	\$ 600
Magness, AR	\$ 200

From:

Atlas, MO	\$ 350
Magness, AR	\$ 200

Food and Food Products

Food Products (STCC 20XXXXXX) in RPL's to or from Carthage, MO	\$ 300
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Forest Products

Lumber (STCC 24XXXX) to Lamar, MO	\$ 300
Lumber, wood, pulp or paper products (STCC's 24XXXXXX and 26XXXXXX) to Springfield and Wallis, MO	\$ 375
Roofing paper (STCC 26612XX) from Joplin, MO	\$ 300

Merchandise Markets

Fiberglass (STCC 32293XX) from Joplin, MO \$ 235

Toys (STCC 3941191) to Aurora, MO \$ 125

Metals and Minerals

Roofing granules to Joplin, MO from
Little Rock, AR
via Newport \$ 500
via Kansas City \$ 300

Steel rods (STCC 33124XX) to Carthage, MO \$ 350

Limestone products carrying STCC's 142XXXX,
3295XXX and 3274XXX from Limedale, AR \$ 200

Industrial sand (STCC 14413XX) from Guion, AR \$ 200

DIVISION ADJUSTMENTS

I. Special Adjustment

Effective January 1, 1995, M&NA shall grant Missouri Pacific/Union Pacific a division reduction of \$45 per car applied to all traffic except the following:

1. Coal movements to Kansas City Power & Light at Ladue, MO.
2. Coal bridged between SEKR and MP/UP.
3. Traffic interchanged at Kansas City for points to/from stations east of Bergman, AR.
4. Traffic interchanged at Newport to/from stations west of and including Bergman, AR.
5. Any traffic billed to/from Wallis and Springfield, MO.
6. Grain and grain products traffic for Carthage, MO; Bergman, AR; Cotter, AR; and Batesville, AR.
7. Chemicals and petroleum products for Atlas, MO via Kansas City.

NOTE: The \$45 decrease shall be applied to the divisions after the January 1, 1995, RCAFU adjustment.

II. Annual Indexed Adjustments

The revenue divisions set forth in this Agreement shall be adjusted annually beginning January 1, 1994, and each January 1 thereafter for the Term of this Agreement. The adjustments shall be based on 50% (.50) of the annual percent changed in the Unadjusted for Productivity Rail Cost Adjustment Factor (RCAFU, 1987 = 1.000) as approved and published by the Interstate Commerce Commission (ICC) in Ex Parte 290 Sub-Nos. 2 and 5. The adjustments will be subject to a maximum increase of 3.0% per year.

The January 1, 1994, adjustment, and the March 1, 1994, adjustment as provided for in Section 22.01, as amended, shall be calculated as the percent change in the first quarter 1993 RCAFU to the first quarter 1994 RCAFU. This percent change will then be multiplied by 50% (.50). This result will then be subject to a 3.0% annual cap. Subsequent January 1 and March 1 adjustments shall be calculated from the first quarter RCAFU of the current year and multiplied by 50% (.50) and then subject to the 3.0% cap. Provided, however, application of the percent change in the RCAFU shall not reduce revenue

divisions below the Base Rates. If the application of the RCAFU percent change would result in revenue divisions falling below the Base Rates, the Base Rates will be in effect until subsequent January 1 and/or March 1 adjustments result in revenue divisions above the Base Rates.

If the ICC rebases the RCAFU, the rebased values will be used in the adjustment calculations. If the previous period's index value was not restated by the ICC, it will be restated with a linking factor. This linking factor will be the ratio of the RCAFU as rebased divided by the RCAFU on the old base for the last period in which the RCAFU is published on both bases. The previous period's value in need of restatement will then be multiplied by this linking factor before making the current adjustment calculations.

In calculating the adjustments, all published and any linked index values will be rounded to a thousandth of an index point; all percent change calculations will be rounded to a tenth of a percent; any linking factors will be rounded to a thousandth of a point; and all revenue divisions will be rounded to whole dollars. The rounding rule used will be that any fraction less than one-half will be dropped while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the ICC ceases to publish, or materially alters the methodology by which the RCAFU is derived, the parties shall determine a substitute index. The substitute index shall be the index that most closely matches the structure of the RCAFU. The substitute index shall be used for the remainder of the contract. If within 90 days after the cancellation/alternation of the index a substitute index can not be found, any party may submit the matter to be determined by binding arbitration.

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EXHIBIT II-A-6
REDACTED

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Total Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
1Q 2006									
1	BAMLUC001	Belle Ayr	111	13,514.65	\$228,349.91	\$16.90	\$14.22	\$2.68	\$36,158.96
2	BAMLUC002	Belle Ayr	114	11,734.13	\$231,977.21	\$19.77	\$14.22	\$5.55	\$65,106.99
3	BAMLUC003	Belle Ayr	108	13,148.60	\$222,167.04	\$16.90	\$14.22	\$2.68	\$35,181.66
4	BAMLUC004	Belle Ayr	107	12,948.55	\$218,779.32	\$16.90	\$14.22	\$2.68	\$34,638.84
5	BAMLUC005	Belle Ayr	112	13,564.38	\$224,899.99	\$16.58	\$14.22	\$2.36	\$32,001.91
6	BAMLUC006	Belle Ayr	111	13,527.43	\$224,203.08	\$16.57	\$14.22	\$2.35	\$31,830.46
7	BAMLUC007	Belle Ayr	113	13,612.28	\$225,638.04	\$16.58	\$14.22	\$2.36	\$32,058.77
8	BAMLUC008	Belle Ayr	115	13,983.70	\$233,332.56	\$16.69	\$14.22	\$2.47	\$34,471.28
9	BAMLUC009	Belle Ayr	114	13,912.68	\$232,138.75	\$16.69	\$14.22	\$2.46	\$34,287.51
10	BAMLUC010	Belle Ayr	114	13,878.93	\$231,543.47	\$16.68	\$14.22	\$2.46	\$34,172.19
11	BAMLUC011	Belle Ayr	111	13,539.60	\$225,930.70	\$16.69	\$14.22	\$2.47	\$33,384.94
12	Sub Total		1,230	147,364.90	\$2,498,960.07	\$16.96			\$403,293.52
13	BTLUC001	Black Thunder	111	13,406.20	\$226,581.41	\$16.90	\$13.86	\$3.04	\$40,716.20
14	BTLUC002	Black Thunder	111	13,448.95	\$227,302.03	\$16.90	\$13.86	\$3.04	\$40,844.13
15	BTLUC003	Black Thunder	114	13,868.75	\$234,362.38	\$16.90	\$13.86	\$3.03	\$42,084.32
16	BTLUC004	Black Thunder	115	11,767.50	\$232,621.90	\$19.77	\$13.86	\$5.90	\$69,475.83
17	BTLUC005	Black Thunder	113	13,624.50	\$230,219.37	\$16.90	\$13.86	\$3.03	\$41,327.62
18	BTLUC006	Black Thunder	114	13,877.00	\$234,480.02	\$16.90	\$13.86	\$3.03	\$42,087.58
19	BTLUC007	Black Thunder	109	13,137.70	\$222,005.60	\$16.90	\$13.86	\$3.03	\$39,862.90
20	BTLUC008	Black Thunder	114	13,861.20	\$234,254.71	\$16.90	\$13.86	\$3.04	\$42,081.32
21	BTLUC009	Black Thunder	115	13,986.70	\$236,365.34	\$16.90	\$13.86	\$3.04	\$42,452.00
22	BTLUC010	Black Thunder	112	13,616.50	\$230,123.29	\$16.90	\$13.86	\$3.04	\$41,342.45
23	BTLUC011	Black Thunder	113	13,742.30	\$227,831.20	\$16.58	\$13.86	\$2.71	\$37,306.26
24	BTLUC012	Black Thunder	113	13,501.60	\$223,833.82	\$16.58	\$13.86	\$2.71	\$36,645.97
25	BTLUC013	Black Thunder	113	13,740.50	\$227,805.53	\$16.58	\$13.86	\$2.72	\$37,305.54
26	BTLUC014	Black Thunder	115	13,950.20	\$231,244.85	\$16.58	\$13.86	\$2.71	\$37,837.55
27	BTLUC015	Black Thunder	115	13,241.20	\$219,524.51	\$16.58	\$13.86	\$2.71	\$35,946.88
28	BTLUC016	Black Thunder	115	13,450.05	\$222,962.71	\$16.58	\$13.86	\$2.71	\$36,489.56
29	BTLUC017	Black Thunder	113	13,419.60	\$226,017.86	\$16.84	\$13.86	\$2.98	\$39,966.87
30	BTLUC018	Black Thunder	116	13,958.80	\$232,924.49	\$16.69	\$13.86	\$2.82	\$39,397.96
31	BTLUC019	Black Thunder	115	13,977.70	\$233,247.00	\$16.69	\$13.86	\$2.82	\$39,458.44
32	BTLUC020	Black Thunder	109	13,258.75	\$221,224.78	\$16.69	\$13.86	\$2.82	\$37,403.83
33	Sub Total		2,265	270,835.70	\$4,574,932.80	\$16.89			\$820,033.20

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters

(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
Total									
34 3/10/2006	SBLUC001	Black Thunder South	116	14,137.60	\$235,822.18	\$16.68	\$13.66	\$3.02	\$42,651.13
35 3/12/2006	SBLUC002	Black Thunder South	110	13,378.05	\$223,220.99	\$16.69	\$13.66	\$3.02	\$40,428.16
36 3/13/2006	SBLUC003	Black Thunder South	115	13,889.75	\$231,762.84	\$16.69	\$13.66	\$3.02	\$41,978.33
37 3/16/2006	SBLUC004	Black Thunder South	111	13,531.25	\$225,811.63	\$16.69	\$13.66	\$3.02	\$40,925.53
38 3/18/2006	SBLUC005	Black Thunder South	114	13,929.75	\$232,382.24	\$16.68	\$13.66	\$3.02	\$42,051.18
39 Sub Total			566	68,866.40	\$1,148,999.88	\$16.68			\$208,034.34
40 1/1/2006	CALUC001	Caballo	115	11,783.73	\$232,892.62	\$19.76	\$14.44	\$5.32	\$62,739.42
41 2/22/2006	CALUC002	Caballo	113	13,287.23	\$220,467.50	\$16.58	\$14.44	\$2.14	\$28,459.85
42 3/21/2006	CALUC003	Caballo	114	13,713.60	\$228,843.94	\$16.69	\$14.44	\$2.25	\$30,824.05
43 3/28/2006	CALUC004	Caballo	110	13,291.00	\$221,759.66	\$16.68	\$14.44	\$2.25	\$29,841.97
44 Sub Total			452	52,085.56	\$903,963.72	\$17.36			\$151,865.29
45 3/6/2006	JRLUC001	Jacobs Ranch	117	14,121.32	\$235,650.95	\$16.69	\$13.84	\$2.84	\$40,147.37
46 Sub Total			117	14,121.32	\$235,650.95	\$16.69			\$40,147.37
2Q 2006									
47 4/7/2006	BAMLUC012	Belle Ayr	111	13,521.08	\$225,555.53	\$16.68	\$14.55	\$2.13	\$28,766.09
48 4/14/2006	BAMLUC013	Belle Ayr	113	13,728.25	\$229,099.85	\$16.69	\$14.55	\$2.13	\$29,295.13
49 4/22/2006	BAMLUC014	Belle Ayr	113	13,777.70	\$229,918.00	\$16.69	\$14.55	\$2.13	\$29,393.57
50 5/21/2006	BAMLUC015	Belle Ayr	114	13,764.18	\$232,643.14	\$16.90	\$14.55	\$2.35	\$32,315.56
51 5/27/2006	BAMLUC016	Belle Ayr	115	13,876.18	\$234,444.26	\$16.90	\$14.55	\$2.34	\$32,486.60
52 6/4/2006	BAMLUC017	Belle Ayr	114	13,790.75	\$237,468.10	\$17.22	\$14.55	\$2.67	\$36,753.74
53 6/12/2006	BAMLUC018	Belle Ayr	113	13,653.38	\$235,151.13	\$17.22	\$14.55	\$2.67	\$36,436.16
54 Sub Total			793	96,111.50	\$1,624,280.01	\$16.90			\$225,446.86
55 4/11/2006	BTLUC021	Black Thunder	112	13,617.10	\$227,219.85	\$16.69	\$14.20	\$2.49	\$33,887.32
56 4/18/2006	BTLUC022	Black Thunder	111	13,511.10	\$225,413.29	\$16.68	\$14.20	\$2.49	\$33,585.72
57 4/25/2006	BTLUC023	Black Thunder	109	13,131.25	\$219,079.63	\$16.68	\$14.20	\$2.49	\$32,645.09
58 4/30/2006	BTLUC024	Black Thunder	113	13,711.75	\$228,751.56	\$16.68	\$14.20	\$2.49	\$34,075.21
59 5/6/2006	BTLUC025	Black Thunder	116	14,073.00	\$237,800.98	\$16.90	\$14.20	\$2.70	\$37,995.68
60 5/8/2006	BTLUC026	Black Thunder	114	13,734.05	\$232,099.55	\$16.90	\$14.20	\$2.70	\$37,106.59
61 5/13/2006	BTLUC027	Black Thunder	116	14,095.75	\$238,241.40	\$16.90	\$14.20	\$2.70	\$38,113.10
62 5/15/2006	BTLUC028	Black Thunder	114	13,739.55	\$232,177.98	\$16.90	\$14.20	\$2.70	\$37,106.93
63 5/16/2006	BTLUC029	Black Thunder	115	13,970.05	\$236,012.91	\$16.89	\$14.20	\$2.70	\$37,669.27
64 5/23/2006	BTLUC030	Black Thunder	114	13,785.35	\$232,945.09	\$16.90	\$14.20	\$2.70	\$37,223.78

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Total			JT 3/ (8)	Overpayment	
					Transportation Charge 1/ (6)	Rate Per Ton 2/ (7)	Reparations 5/ (10)		Per Ton 4/ (9)	
65 6/2/2006	BTLUC031	Black Thunder	107	13,004.55	\$223,964.88	\$17.22	\$39,329.19	\$14.20	\$3.02	
66 6/6/2006	BTLUC032	Black Thunder	113	13,770.45	\$237,159.62	\$17.22	\$41,649.86	\$14.20	\$3.02	
67 6/10/2006	BTLUC033	Black Thunder	115	13,984.90	\$240,824.67	\$17.22	\$42,270.20	\$14.20	\$3.02	
68 6/16/2006	BTLUC034	Black Thunder	114	13,866.80	\$238,780.57	\$17.22	\$41,902.85	\$14.20	\$3.02	
69 Sub Total			1,583	191,995.65	\$3,250,471.98	\$16.93	\$524,560.78			
70 4/6/2006	sbluc006	Black Thunder South	113	13,799.15	\$230,223.88	\$16.68	\$36,375.98	\$14.05	\$2.64	
71 5/4/2006	SBTLUC007	Black Thunder South	112	13,600.10	\$229,777.43	\$16.90	\$38,725.75	\$14.05	\$2.85	
72 5/9/2006	SBTLUC008	Black Thunder South	118	14,324.30	\$242,024.52	\$16.90	\$40,799.41	\$14.05	\$2.85	
73 6/13/2006	SBTLUC009	Black Thunder South	116	14,139.60	\$243,506.70	\$17.22	\$44,876.22	\$14.05	\$3.17	
74 6/19/2006	SBLUC010	Black Thunder South	113	13,778.45	\$237,273.70	\$17.22	\$43,716.59	\$14.05	\$3.17	
75 6/21/2006	SBLUC011	Black Thunder South	110	13,384.45	\$230,462.26	\$17.22	\$42,439.99	\$14.05	\$3.17	
76 6/29/2006	SBLUC012	Black Thunder South	114	13,868.05	\$238,798.39	\$17.22	\$43,982.60	\$14.05	\$3.17	
77 Sub Total			796	96,894.10	\$1,652,066.88	\$17.05	\$290,916.55			
78 4/3/2006	CALUC005	Caballo	114	13,769.98	\$229,761.91	\$16.69	\$29,768.72	\$14.52	\$2.16	
79 6/24/2006	CALUC006	Caballo	115	14,033.32	\$241,630.14	\$17.22	\$37,812.23	\$14.52	\$2.69	
80 Sub Total			229	27,803.30	\$471,392.05	\$16.95	\$67,580.95			
81 4/15/2006	JRLUC002	Jacobs Ranch	114	13,773.51	\$229,812.18	\$16.69	\$32,681.12	\$14.31	\$2.37	
82 4/22/2006	JRLUC003	Jacobs Ranch	115	13,879.00	\$231,609.54	\$16.69	\$32,968.60	\$14.31	\$2.38	
83 5/2/2006	JRLUC004	Jacobs Ranch	113	13,639.42	\$230,432.06	\$16.89	\$35,220.14	\$14.31	\$2.58	
84 5/19/2006	JRLUC005	Jacobs Ranch	111	13,531.28	\$228,697.98	\$16.90	\$35,033.80	\$14.31	\$2.59	
85 5/26/2006	JRLUC006	Jacobs Ranch	108	13,165.18	\$222,511.47	\$16.90	\$34,086.96	\$14.31	\$2.59	
86 5/31/2006	JRLUC007	Jacobs Ranch	115	13,967.09	\$235,970.63	\$16.89	\$36,068.99	\$14.31	\$2.58	
87 6/20/2006	JRLUC008	Jacobs Ranch	109	13,187.97	\$227,082.38	\$17.22	\$38,331.76	\$14.31	\$2.91	
88 6/29/2006	JRLUC009	Jacobs Ranch	116	14,039.53	\$241,731.70	\$17.22	\$40,793.20	\$14.31	\$2.91	
89 Sub Total			901	109,182.96	\$1,847,847.94	\$16.92	\$285,184.56			
3Q 2006										
90 7/1/2006	BAMLUC019	Belle Ayr	115	14,020.43	\$245,931.26	\$17.54	\$34,987.15	\$15.05	\$2.50	
91 7/9/2006	BAMLUC020	Belle Ayr	115	13,997.93	\$245,495.41	\$17.54	\$34,889.83	\$15.05	\$2.49	
92 7/16/2006	BAMLUC021	Belle Ayr	115	13,980.48	\$245,246.57	\$17.54	\$34,903.53	\$15.05	\$2.50	
93 7/22/2006	BAMLUC022	Belle Ayr	114	13,874.85	\$243,341.36	\$17.54	\$34,587.50	\$15.05	\$2.49	
94 7/24/2006	BAMLUC023	Belle Ayr	115	14,028.40	\$246,044.98	\$17.54	\$34,980.89	\$15.05	\$2.49	
95 8/1/2006	BAMLUC024	Belle Ayr	115	14,028.78	\$246,050.33	\$17.54	\$34,980.59	\$15.05	\$2.49	

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Total Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
96 8/8/2006	BAMLUC025	Belle Ayr	115	14,026 20	\$246,013 61	\$17 54	\$15 05	\$2 49	\$34,982 62
97 8/16/2006	BAMLUC026	Belle Ayr	115	14,011 28	\$245,800 78	\$17 54	\$15 05	\$2 50	\$34,994 34
98 8/19/2006	BAMLUC027	Belle Ayr	113	13,658 38	\$239,516 43	\$17 54	\$15 05	\$2 49	\$34,019 54
99 8/25/2006	BAMLUC028	Belle Ayr	115	14,008 18	\$245,756 58	\$17 54	\$15 05	\$2 50	\$34,996 78
100 8/30/2006	BAMLUC029	Belle Ayr	114	13,783 28	\$241,807 50	\$17 54	\$15 05	\$2 50	\$34,431 43
101 9/1/2006	BAMLUC030	Belle Ayr	115	13,996 75	\$246,973 66	\$17 65	\$15 05	\$2 60	\$36,385 76
102 9/2/2006	BAMLUC031	Belle Ayr	115	14,012 83	\$247,317 88	\$17 65	\$15 05	\$2 60	\$36,488 12
103 9/8/2006	bamluc032	Belle Ayr	111	13,528 48	\$238,759 05	\$17 65	\$15 05	\$2 60	\$35,216 57
104 9/15/2006	BAMLUC033	Belle Ayr	114	13,781 78	\$243,154 11	\$17 64	\$15 05	\$2 60	\$35,800 61
105 9/24/2006	BMLUC034	Belle Ayr	115	14,038 03	\$247,677 24	\$17 64	\$15 05	\$2 60	\$36,468 33
106 Sub Total			1,831	222,776.00	\$3,914,886.75	\$17 57			\$563,113.59
107 7/29/2006	BTLUC035	Black Thunder	114	13,808 35	\$242,165 07	\$17 54	\$14 66	\$2 87	\$39,684 43
108 8/7/2006	BTLUC036	Black Thunder	116	14,105 35	\$247,426 29	\$17 54	\$14 66	\$2 88	\$40,590 55
109 8/14/2006	BTLUC037	Black Thunder	116	14,125 50	\$247,713 63	\$17 54	\$14 66	\$2 87	\$40,582 42
110 8/23/2006	BTLUC038	Black Thunder	115	14,003 65	\$245,577 05	\$17 54	\$14 66	\$2 87	\$40,232 61
111 9/28/2006	BTLUC039	Black Thunder	112	13,554 40	\$239,205 74	\$17 65	\$14 66	\$2 98	\$40,448 93
112 Sub Total			573	69,597.25	\$1,222,087.78	\$17.56			\$201,538.95
113 7/8/2006	SBLUC013	Black Thunder South	111	13,519 30	\$237,074 22	\$17 54	\$14 56	\$2 97	\$40,185 50
114 7/15/2006	SBLUC014	Black Thunder South	114	13,848 35	\$242,849 47	\$17 54	\$14 56	\$2 97	\$41,168 62
115 9/10/2006	SBLUC015	Black Thunder South	115	14,012 00	\$247,306 12	\$17 65	\$14 56	\$3 09	\$43,241 95
116 9/18/2006	SBLUC016	Black Thunder South	115	14,081 90	\$248,532 89	\$17 65	\$14 56	\$3 09	\$43,450 73
117 9/22/2006	SBLUC017	Black Thunder South	114	13,774 35	\$243,048 23	\$17 64	\$14 56	\$3 08	\$42,445 09
118 9/24/2006	SBLUC018	Black Thunder South	115	13,993 05	\$246,920 89	\$17 65	\$14 56	\$3 08	\$43,132 70
119 Sub Total			684	83,228 95	\$1,465,731.82	\$17.61			\$253,624.60
120 7/27/2006	CALUC007	Caballo	116	14,017 38	\$245,823 84	\$17 54	\$15 06	\$2 47	\$34,683 47
121 8/4/2006	CALUC008	Caballo	117	14,137 04	\$247,926 19	\$17 54	\$15 06	\$2 47	\$34,983 41
122 8/12/2006	CALUC009	Caballo	115	13,920 26	\$244,157 91	\$17 54	\$15 06	\$2 48	\$34,480 44
123 Sub Total			348	42,074.68	\$737,907 94	\$17.54			\$104,147.33
124 7/9/2006	JRLUC010	Jacobs Ranch	107	12,937 85	\$226,972 74	\$17 54	\$14 89	\$2 66	\$34,384 72
125 7/18/2006	JRLUC011	Jacobs Ranch	112	13,538 91	\$237,416 79	\$17 54	\$14 89	\$2 65	\$35,881 69
126 9/9/2006	JRLUC012	Jacobs Ranch	115	14,006 13	\$247,107 34	\$17 64	\$14 89	\$2 76	\$38,617 37
127 9/17/2006	JRLUC013	Jacobs Ranch	112	13,172 92	\$232,421 84	\$17 64	\$14 89	\$2 76	\$36,334 65

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ Date (3)	No of Cars 1/ (4)	Tons 1/ (5)	Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
128 Sub Total			446	53,655.80	\$943,918.71	\$17.59			\$145,218.43
4Q 2006									
129 10/2/2006	BAMLUC035	Belle Ayr	115	14,087.95	\$251,609.17	\$17.86	\$14.26	\$3.60	\$50,662.26
130 10/9/2006	BAMLUC036	Belle Ayr	115	13,983.43	\$249,773.64	\$17.86	\$14.26	\$3.60	\$50,317.65
131 10/16/2006	BAMLUC037	Belle Ayr	115	13,986.33	\$249,814.99	\$17.86	\$14.26	\$3.60	\$50,317.84
132 10/18/2006	BAMLUC038	Belle Ayr	115	13,882.88	\$247,994.80	\$17.86	\$14.26	\$3.60	\$49,973.03
133 10/26/2006	BAMLUC039	Belle Ayr	113	13,647.00	\$243,761.22	\$17.86	\$14.26	\$3.60	\$49,103.91
134 11/3/2006	BAMLUC040	Belle Ayr	115	14,006.20	\$242,623.41	\$17.32	\$14.26	\$3.06	\$42,842.56
135 11/10/2006	BAMLUC041	Belle Ayr	115	13,903.83	\$240,933.54	\$17.33	\$14.26	\$3.06	\$42,612.95
136 11/20/2006	BAMLUC042	Belle Ayr	115	14,015.90	\$242,876.73	\$17.33	\$14.26	\$3.06	\$42,957.53
137 11/23/2006	BAMLUC043	Belle Ayr	114	13,777.83	\$238,765.78	\$17.33	\$14.26	\$3.07	\$42,242.42
138 12/1/2006	BAMLUC044	Belle Ayr	113	13,738.13	\$230,709.66	\$16.79	\$14.26	\$2.53	\$34,752.57
139 12/1/2006	BAMLUC045	Belle Ayr	114	13,777.90	\$231,356.85	\$16.79	\$14.26	\$2.53	\$34,832.42
140 12/9/2006	BAMLUC046	Belle Ayr	113	13,746.08	\$230,823.03	\$16.79	\$14.26	\$2.53	\$34,752.54
141 12/14/2006	BAMLUC047	Belle Ayr	116	14,136.18	\$237,309.86	\$16.79	\$14.26	\$2.52	\$35,675.08
142 12/24/2006	BAMLUC048	Belle Ayr	114	13,831.23	\$232,231.27	\$16.79	\$14.26	\$2.53	\$34,946.22
143 Sub Total			1,602	194,520.83	\$3,370,583.95	\$17.33			\$595,988.78
144 10/4/2006	BTLUC040	Black Thunder	111	13,430.80	\$239,919.21	\$17.86	\$14.59	\$3.27	\$43,898.46
145 10/14/2006	BTLUC041	Black Thunder	115	13,988.55	\$249,846.72	\$17.86	\$14.59	\$3.27	\$45,685.68
146 12/7/2006	BTLUC042	Black Thunder	116	14,049.45	\$235,957.16	\$16.79	\$14.59	\$2.20	\$30,907.29
147 12/7/2006	BTLUC043	Black Thunder	113	13,500.65	\$226,645.27	\$16.79	\$14.59	\$2.19	\$29,605.06
148 12/17/2006	BTLUC044	Black Thunder	113	13,652.50	\$229,262.65	\$16.79	\$14.59	\$2.20	\$30,006.21
149 12/28/2006	BTLUC045	Black Thunder	115	13,995.50	\$234,995.83	\$16.79	\$14.59	\$2.20	\$30,733.35
150 12/29/2006	BTLUC046	Black Thunder	113	13,675.05	\$229,584.21	\$16.79	\$14.59	\$2.19	\$29,998.66
151 Sub Total			796	96,292.50	\$1,646,211.05	\$17.10			\$240,834.71
152 10/2/2006	SBLUC019	Black Thunder South	115	14,006.85	\$250,222.68	\$17.86	\$13.80	\$4.06	\$56,886.86
153 10/12/2006	SBLUC020	Black Thunder South	115	13,879.70	\$247,949.52	\$17.86	\$13.80	\$4.06	\$56,368.74
154 11/4/2006	SBLUC021	Black Thunder South	113	13,685.15	\$237,073.24	\$17.32	\$13.80	\$3.52	\$48,177.83
155 11/13/2006	SBLUC022	Black Thunder South	116	14,010.15	\$242,704.74	\$17.32	\$13.80	\$3.52	\$49,323.37
156 Sub Total			459	55,581.85	\$977,950.18	\$17.59			\$210,756.79
157 10/26/2006	CALUC010	Caballo	113	13,726.44	\$245,120.03	\$17.86	\$14.26	\$3.60	\$49,431.47
158 11/4/2006	CALUC011	Caballo	114	13,847.56	\$239,874.21	\$17.32	\$14.26	\$3.07	\$42,458.92

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
Total									
159 11/13/2006	CALUC012	Caballo	116	14,123.86	\$244,674.24	\$17.32	\$14.26	\$3.07	\$43,319.93
160 12/25/2006	CALUC013	Caballo	115	13,972.29	\$234,664.86	\$16.80	\$14.26	\$2.54	\$35,471.38
161 Sub Total			458	55,670.15	\$964,333.34	\$17.32			\$170,681.70
162 10/22/2006	JRLUC014	Jacobs Ranch	115	13,994.90	\$249,937.27	\$17.86	\$14.92	\$2.94	\$41,134.37
163 11/21/2006	JRLUC015	Jacobs Ranch	116	14,085.83	\$244,015.94	\$17.32	\$14.92	\$2.40	\$33,856.37
164 11/28/2006	JRLUC016	Jacobs Ranch	114	13,892.76	\$240,746.69	\$17.33	\$14.92	\$2.41	\$33,467.79
165 12/17/2006	JRLUC017	Jacobs Ranch	115	13,980.43	\$234,780.93	\$16.79	\$14.92	\$1.87	\$26,193.92
166 12/19/2006	JRLUC018	Jacobs Ranch	115	13,981.34	\$234,793.84	\$16.79	\$14.92	\$1.87	\$26,193.33
167 Sub Total			575	69,935.25	\$1,204,274.67	\$17.22			\$160,845.78
1Q 2007									
168 1/7/2007	BAMLUC001	Belle Ayr	113	13,648.08	\$238,334.95	\$17.46	\$14.37	\$3.10	\$42,244.88
169 1/19/2007	BAMLUC002	Belle Ayr	111	13,286.35	\$232,001.57	\$17.46	\$14.37	\$3.09	\$41,108.62
170 1/29/2007	BAMLUC003	Belle Ayr	113	13,109.90	\$230,871.43	\$17.61	\$14.37	\$3.24	\$42,513.64
171 2/2/2007	BAMLUC004	Belle Ayr	113	13,680.65	\$241,982.04	\$17.69	\$14.37	\$3.32	\$45,423.95
172 2/7/2007	BAMLUC005	Belle Ayr	112	13,023.58	\$231,740.32	\$17.79	\$14.37	\$3.43	\$44,622.82
173 2/11/2007	BAMLUC006	Belle Ayr	115	13,164.55	\$237,947.65	\$18.07	\$14.37	\$3.71	\$48,804.68
174 3/14/2007	BMLUC007	Belle Ayr	116	14,103.18	\$244,762.09	\$17.36	\$14.37	\$2.99	\$42,133.33
175 3/20/2007	BMLUC008	Belle Ayr	116	14,121.18	\$245,029.03	\$17.35	\$14.37	\$2.98	\$42,141.65
176 Sub Total			909	108,137.45	\$1,902,669.08	\$17.59			\$348,993.57
177 1/3/2007	BTLUC001	Black Thunder	114	13,847.40	\$241,836.94	\$17.46	\$16.21	\$1.25	\$17,335.67
178 2/22/2007	BTLUC002	Black Thunder	119	14,471.05	\$255,898.67	\$17.68	\$16.21	\$1.47	\$21,286.46
179 2/27/2007	BTLUC003	Black Thunder	114	13,876.50	\$245,346.50	\$17.68	\$16.21	\$1.47	\$20,373.45
180 3/2/2007	BTLUC004	Black Thunder	115	14,012.85	\$243,115.57	\$17.35	\$16.21	\$1.14	\$15,931.94
181 3/7/2007	BTLUC005	Black Thunder	116	14,107.00	\$244,818.81	\$17.35	\$16.21	\$1.14	\$16,108.77
182 3/10/2007	BTLUC006	Black Thunder	114	13,841.40	\$240,151.96	\$17.35	\$16.21	\$1.14	\$15,747.97
183 Sub Total			692	84,156.20	\$1,471,168.45	\$17.48			\$106,784.26
184 1/5/2007	SBLUC001	Black Thunder South	114	13,877.80	\$242,287.77	\$17.46	\$15.40	\$2.05	\$28,508.50
185 2/13/2007	SBLUC002	Black Thunder South	112	13,396.80	\$236,866.54	\$17.68	\$15.40	\$2.28	\$30,496.79
186 2/20/2007	SBLUC003	Black Thunder South	113	13,332.05	\$235,795.30	\$17.69	\$15.40	\$2.28	\$30,422.99
187 Sub Total			339	40,606.65	\$714,949.61	\$17.61			\$89,428.28
188 1/5/2007	CALUC001	Caballo	113	13,653.04	\$238,408.58	\$17.46	\$14.41	\$3.06	\$41,720.98

**Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)**

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
Total									
189 1/10/2007	CALUC002	Caballo	113	12,975.77	\$230,871.43	\$17.79	\$14.41	\$3.39	\$43,940.68
190 1/21/2007	CALUC003	Caballo	115	12,550.97	\$234,957.65	\$18.72	\$14.41	\$4.31	\$54,146.63
191 1/22/2007	CALUC004	Caballo	113	13,382.31	\$233,715.66	\$17.46	\$14.41	\$3.06	\$40,928.24
192 2/3/2007	CALUC005	Caballo	111	13,286.45	\$235,000.05	\$17.69	\$14.41	\$3.28	\$43,593.60
193 3/1/2007	CALUC006	Caballo	114	13,769.86	\$238,977.02	\$17.36	\$14.41	\$2.95	\$40,606.50
194 3/9/2007	CALUC007	Caballo	114	13,775.95	\$239,067.34	\$17.35	\$14.41	\$2.95	\$40,609.08
195 3/16/2007	CALUC008	Caballo	116	14,028.26	\$243,419.10	\$17.35	\$14.41	\$2.95	\$41,326.03
196 3/23/2007	CALUC009	Caballo	116	14,028.36	\$243,420.58	\$17.35	\$14.41	\$2.95	\$41,326.07
197 Sub Total			1,025	121,450.97	\$2,137,837.41	\$17.60			\$388,197.81
198 1/8/2007	JRLUC001	Jacobs Ranch	113	13,733.19	\$239,823.13	\$17.46	\$15.18	\$2.28	\$31,335.37
199 1/13/2007	JRLUC002	Jacobs Ranch	113	13,694.83	\$239,141.33	\$17.46	\$15.18	\$2.28	\$31,235.85
200 2/11/2007	JRLUC003	Jacobs Ranch	116	13,853.11	\$244,997.55	\$17.69	\$15.18	\$2.50	\$34,689.25
201 2/19/2007	JRLUC004	Jacobs Ranch	116	13,401.05	\$240,016.76	\$17.91	\$15.18	\$2.73	\$36,571.32
202 2/20/2007	JRLUC005	Jacobs Ranch	115	12,845.41	\$237,947.65	\$18.82	\$15.18	\$3.64	\$45,973.82
203 2/26/2007	JRLUC006	Jacobs Ranch	116	14,100.48	\$249,362.04	\$17.68	\$15.18	\$2.50	\$35,298.34
204 3/5/2007	JRLUC007	Jacobs Ranch	116	14,097.66	\$244,564.22	\$17.35	\$15.18	\$2.17	\$30,543.33
205 3/11/2007	JRLUC008	Jacobs Ranch	116	14,112.86	\$244,905.64	\$17.35	\$15.18	\$2.17	\$30,653.99
206 3/17/2007	JRLUC009	Jacobs Ranch	117	14,183.91	\$246,149.31	\$17.35	\$15.18	\$2.17	\$30,819.03
207 3/18/2007	JRLUC010	Jacobs Ranch	115	13,960.68	\$242,226.88	\$17.35	\$15.18	\$2.17	\$30,285.45
208 3/25/2007	JRLUC011	Jacobs Ranch	114	13,890.74	\$240,997.60	\$17.35	\$15.18	\$2.17	\$30,118.03
209 3/26/2007	JRLUC012	Jacobs Ranch	116	14,081.34	\$244,322.27	\$17.35	\$15.18	\$2.17	\$30,549.06
210 Sub Total			1,383	165,755.22	\$2,914,454.38	\$17.58			\$398,072.86
2Q 2007									
211 4/4/2007	BAMLUC009	Belle Ayr	115	13,992.75	\$242,817.48	\$17.35	\$14.96	\$2.40	\$33,548.69
212 4/12/2007	BAMLUC010	Belle Ayr	115	13,543.20	\$235,000.66	\$17.35	\$14.96	\$2.40	\$32,455.12
213 5/27/2007	BAMLUC011	Belle Ayr	116	14,142.00	\$234,781.86	\$16.60	\$14.96	\$1.65	\$23,280.96
214 6/3/2007	BAMLUC012	Belle Ayr	116	14,139.43	\$237,991.67	\$16.83	\$14.96	\$1.88	\$26,529.28
215 6/12/2007	BAMLUC013	Belle Ayr	116	14,129.53	\$237,844.86	\$16.83	\$14.96	\$1.88	\$26,530.53
216 6/24/2007	BAMLUC014	Belle Ayr	115	14,000.28	\$235,684.08	\$16.83	\$14.96	\$1.88	\$26,302.75
217 6/30/2007	BAMLUC015	Belle Ayr	115	14,010.18	\$235,830.90	\$16.83	\$14.96	\$1.88	\$26,301.51
218 Sub Total			808	97,957.35	\$1,659,951.51	\$16.95			\$194,948.82
219 4/19/2007	BTLUC007	Black Thunder	114	13,862.70	\$240,581.84	\$17.35	\$14.44	\$2.91	\$40,341.18
220 Sub Total			114	13,862.70	\$240,581.84	\$17.35			\$40,341.18

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
Total									
221 4/4/2007	SBLUC004	Black Thunder South	116	14,136 20	\$245,251 85	\$17 35	\$14 50	\$2 84	\$40,212 50
222 4/13/2007	SBLUC005	Black Thunder South	114	13,770 55	\$238,987 26	\$17 35	\$14 50	\$2 85	\$39,251 50
223 Sub Total			230	27,906 75	\$484,239 11	\$17 35			\$79,464 00
224 4/6/2007	CALUC010	Caballo	116	14,039 72	\$243,589 05	\$17 35	\$15 00	\$2 35	\$33,054 60
225 4/27/2007	CALUC011	Caballo	116	13,934 81	\$228,461 23	\$16 40	\$15 00	\$1 40	\$19,499 97
226 5/3/2007	CALUC012	Caballo	116	14,079 88	\$233,860 62	\$16 61	\$15 00	\$1 61	\$22,723 94
227 5/13/2007	CALUC013	Caballo	115	13,994 53	\$232,378 88	\$16 60	\$15 00	\$1 61	\$22,522 08
228 5/24/2007	CALUC014	Caballo	115	14,025 50	\$232,838 17	\$16 60	\$15 00	\$1 61	\$22,516 95
229 6/1/2007	CALUC015	Caballo	116	14,133 45	\$237,903 06	\$16 83	\$15 00	\$1 84	\$25,963 06
230 6/10/2007	CALUC016	Caballo	115	14,033 10	\$236,170 87	\$16 83	\$15 00	\$1 83	\$25,735 69
231 6/16/2007	CALUC017	Caballo	114	13,787 65	\$232,286 85	\$16 85	\$15 00	\$1 85	\$25,532 34
232 6/17/2007	CALUC018	Caballo	115	13,988 33	\$235,506 93	\$16 84	\$15 00	\$1 84	\$25,743 10
233 Sub Total			1,038	126,016 97	\$2,112,995 66	\$16 77			\$223,291 73
234 4/1/2007	JRLUC013	Jacobs Ranch	116	14,080 20	\$244,305 29	\$17 35	\$14 66	\$2 70	\$37,955 37
235 4/9/2007	JRLUC014	Jacobs Ranch	116	14,131 99	\$245,189 34	\$17 35	\$14 66	\$2 69	\$38,080 42
236 4/14/2007	JRLUC015	Jacobs Ranch	116	14,022 18	\$243,328 86	\$17 35	\$14 66	\$2 70	\$37,829 24
237 4/16/2007	JRLUC016	Jacobs Ranch	116	14,103 70	\$244,769 87	\$17 36	\$14 66	\$2 70	\$38,075 47
238 4/23/2007	JRLUC017	Jacobs Ranch	114	13,749 83	\$238,565 90	\$17 35	\$14 66	\$2 70	\$37,057 66
239 4/25/2007	JRLUC018	Jacobs Ranch	116	14,120 86	\$245,024 28	\$17 35	\$14 66	\$2 70	\$38,078 47
240 4/29/2007	JRLUC019	Jacobs Ranch	114	13,769 11	\$225,057 83	\$16 35	\$14 66	\$1 69	\$23,267 04
241 5/2/2007	JRLUC020	Jacobs Ranch	116	14,130 95	\$233,921 99	\$16 55	\$14 66	\$1 90	\$26,828 24
242 5/5/2007	JRLUC021	Jacobs Ranch	114	13,745 91	\$227,791 77	\$16 57	\$14 66	\$1 92	\$26,340 98
243 5/10/2007	JRLUC022	Jacobs Ranch	116	14,109 57	\$233,604 92	\$16 56	\$14 66	\$1 90	\$26,824 50
244 5/16/2007	JRLUC023	Jacobs Ranch	116	13,990 13	\$231,833 63	\$16 57	\$14 66	\$1 92	\$26,803 64
245 5/20/2007	JRLUC024	Jacobs Ranch	116	14,124 08	\$233,820 03	\$16 55	\$14 66	\$1 90	\$26,827 03
246 5/25/2007	JRLUC025	Jacobs Ranch	116	14,015 08	\$232,203 56	\$16 57	\$14 66	\$1 91	\$26,807 99
247 6/1/2007	JRLUC026	Jacobs Ranch	115	13,864 44	\$232,979 57	\$16 80	\$14 66	\$2 15	\$29,791 68
248 6/20/2007	JRLUC027	Jacobs Ranch	116	14,231 63	\$238,663 07	\$16 77	\$14 66	\$2 11	\$30,093 82
249 6/22/2007	JRLUC028	Jacobs Ranch	116	14,011 53	\$235,398 99	\$16 80	\$14 66	\$2 15	\$30,055 38

Reparations Calculation Based on URCS Phase III Jurisdictional Threshold Using Agreed Upon Inputs and Actual Operating Parameters
(1/01/2006 to 6/30/2007)

Shipped Date 1/ (1)	Transporter ID 1/ (2)	Origin 1/ (3)	No of Cars 1/ (4)	Tons 1/ (5)	Total Transportation Charge 1/ (6)	Transportation Rate Per Ton 2/ (7)	JT 3/ (8)	Overpayment Per Ton 4/ (9)	Reparations 5/ (10)
250 6/29/2007	JRLUC029	Jacobs Ranch	116	14,238.02	\$238,757.84	\$16.77	\$14.66	\$2.11	\$30,094.94
251 Sub Total			1,965	238,439.16	\$4,025,216.74	\$16.88			\$530,811.87
252 GRAND TOTAL			25,207	3,042,884.05	\$52,320,516.26				\$8,064,148.47
								Reparations With Interest	\$8,413,211.79

1/ KCPL data

2/ Column (6) - Column (5)

3/ Jurisdictional Thresholds from Exhibit II-A-1

7/ Column (7) - Column (8)

5/ Column (9) x Column (5)

6/ Excludes frozen coal charge of \$3,508.77

7/ Excludes frozen coal charge of \$70.59

EXHIBIT IV-1
REDACTED